

**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): July 30, 2019**

**KURA SUSHI USA, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other Jurisdiction  
of Incorporation)

**001-39012**  
(Commission  
File Number)

**26-3808434**  
(IRS Employer  
Identification No.)

**17932 Sky Park Circle, Suite H**  
**Irvine, California 92614**  
(Address of Principal Executive Offices)

**92614**  
(Zip Code)

**Registrant's telephone number, including area code: (949) 748-1786**

(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:

- 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.001 per share	KRUS	The Nasdaq Stock Market LLC

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.

### **Item 1.01. Entry into a Material Definitive Agreement.**

On August 5, 2019, Kura Sushi USA, Inc. (the “Company”) closed its initial public offering (“IPO”) of 3,335,000 shares of the Company’s Class A common stock, \$0.001 par value per share (the “Class A Common Stock”), at an offering price of \$14.00 per share, pursuant to the Company’s registration statement on Form S-1 (File No. 333-232551), as amended (the “Registration Statement”), which included the full exercise of the underwriters’ option to purchase up to an additional 435,000 shares of Class A Common Stock as part of the IPO.

#### *Shared Services Agreement*

On August 5, 2019, in connection with the closing of the IPO, the Company entered into a Shared Services Agreement with Kura Sushi, Inc. (“Kura Japan”) pursuant to which Kura Japan will provide the Company with certain strategic, operational and other support services, including assigning certain employees to work for the Company as expatriates to provide support to the Company’s operations, sending its employees to the Company on a short-term basis to provide support for the opening of new restaurants or renovation of existing restaurants, and providing the Company with certain supplies, parts and equipment for use in the Company’s restaurants. In addition, the Company has agreed to continue to provide Kura Japan with certain translational support services and market research analyses. In exchange for such services, supplies, parts and equipment, the parties will pay fees to each other as set forth under the Shared Services Agreement. The Shared Services Agreement may be modified or supplemented to include additional services under terms and conditions to be mutually agreed upon in good faith by the parties. The fees for additional services shall be mutually agreed upon by the parties.

The foregoing is only a summary of the material terms of the Shared Services Agreement and does not purport to be complete, and is qualified in its entirety by reference to the Shared Services Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein.

#### *Amended and Restated Exclusive License Agreement*

On August 5, 2019, in connection with the closing of the IPO, the Company entered into an Amended and Restated Exclusive License Agreement (the “License Agreement”) with Kura Japan. Pursuant to the License Agreement, the Company will pay Kura Japan a royalty fee of 0.5% of the Company’s net sales in exchange for an exclusive, royalty-bearing license for use of certain of Kura Japan’s intellectual property rights, including, but not limited to, Kura Japan’s trademarks “Kura Sushi” and “Kura Revolving Sushi Bar,” and patents for a food management system and the Mr. Fresh protective dome, among other intellectual property rights necessary to continue operation of the Company’s restaurants.

The foregoing is only a summary of the material terms of the License Agreement and does not purport to be complete, and is qualified in its entirety by reference to the License Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.2 and incorporated by reference herein.

### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

#### *Election of Director*

Effective upon the completion of the IPO on August 5, 2019, the Company appointed Shintaro Asako as a member of the Company’s Board of Directors (the “Board”). In connection with his appointment, Mr. Asako was also appointed to serve as a member of each of the Compensation Committee and Audit Committee of the Board. The Board has determined that Mr. Asako meets the definition of an “independent director” for the purposes of serving on an Audit Committee under applicable Securities and Exchange Commission and Nasdaq Stock Market rules and qualifies as an “audit committee financial expert,” as such term is defined in Item 407 of Regulation S-K.

In connection with his appointment, Mr. Asako and the Company entered into the Company’s standard indemnification agreement, the form of which was previously filed with the Company’s Registration Statement. There is no other material Company plan, contract or arrangement in which Mr. Asako will participate in connection with his appointments. There are no arrangements or understandings between Mr. Asako and any other person

pursuant to which Mr. Asako was selected as a director of the Company, and there is no family relationship between Mr. Asako and any of the Company's other directors or executive officers. There are also no related party transactions between either of Mr. Asako and the Company that are required to be reported pursuant to Item 404(a) of Regulation S-K.

#### *Compensatory Arrangements of Certain Officers*

As previously described in the Company's Registration Statement, upon completion of the IPO on August 5, 2019, the Company entered into employment agreements with each of Hajime Uba (in his position as Chairman of the Board, President and Chief Executive Officer of the Company), Koji Shinohara (in his position as Chief Financial Officer, Treasurer, Secretary and Chief Compliance Officer of the Company) and Manabu Kamei (in his position as the Chief Operating Officer of the Company) (collectively, the "Employment Agreements").

Pursuant to the Employment Agreements, Messrs. Uba, Shinohara and Kamei will be entitled to initial base salaries of \$340,000, \$240,000, and \$220,000, respectively. In addition, Messrs. Uba, Shinohara and Kamei will be eligible to receive annual performance-based cash bonuses, the amount and terms of which shall be in the discretion of the Compensation Committee of the Board. Messrs. Uba, Shinohara and Kamei will also be eligible to receive equity awards, the form and terms of which will be determined by the Board or the Compensation Committee of the Board in their discretion.

The foregoing description of the Employment Agreements is qualified in its entirety by reference to the full texts of the Employment Agreements, which are filed as Exhibits 10.3, 10.4 and 10.5 hereto, each of which is incorporated by reference herein.

#### **Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

##### *Amended and Restated Certificate of Incorporation*

Prior to the closing of the IPO, the Company amended and restated its Certificate of Incorporation (as amended and restated, the "Certificate of Incorporation"), which was filed with the Secretary of State of the State of Delaware on July 30, 2019. A description of the Certificate of Incorporation is contained in the section of the Registration Statement entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Registration Statement are qualified in their entirety by reference to the full text of the Certificate of Incorporation, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

##### *Amended and Restated Bylaws*

Effective immediately prior to the closing of the IPO on August 5, 2019, the Company amended and restated its Bylaws (as amended and restated, the "Bylaws"). A description of the Bylaws is contained in the section of the Registration Statement entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Registration Statement are qualified in their entirety by reference to the full text of the Bylaws, which is filed as Exhibit 3.2 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

#### **Item 8.01 Other Events.**

On August 5, 2019, the Company issued a press release announcing the closing of the IPO. A copy of the press release is being filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated in this Item 8.01 by reference.

**Item 9.01 Financial Statements and Exhibits.**

*(d) Exhibits*

<u>Exhibit No.</u>	<u>Description</u>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of Kura Sushi USA, Inc.</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws of Kura Sushi USA, Inc.</u></a>
10.1	<a href="#"><u>Shared Services Agreement, dated August 5, 2019, between the Kura Sushi USA, Inc. and Kura Sushi, Inc.</u></a>
10.2	<a href="#"><u>Amended and Restated Exclusive License Agreement, dated August 5, 2019, between the Kura Sushi USA, Inc. and Kura Sushi, Inc.</u></a>
10.3	<a href="#"><u>Employment Agreement, dated August 5, 2019, between the Kura Sushi USA, Inc. and Hajime Uba</u></a>
10.4	<a href="#"><u>Employment Agreement, dated August 5, 2019, between the Kura Sushi USA, Inc. and Koji Shinohara</u></a>
10.5	<a href="#"><u>Employment Agreement, dated August 5, 2019, between the Kura Sushi USA, Inc. and Manabu Kamei</u></a>
99.1	<a href="#"><u>Press Release dated August 5, 2019</u></a>

**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.

KURA SUSHI USA, INC.

Date: August 5, 2019

By: /s/ Hajime Uba

Name: Hajime Uba

Title: Chairman, President and CEO

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION OF**  
**KURA SUSHI USA, INC.**

Kura Sushi USA, Inc. (the "**Corporation**"), a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "**DGCL**"), does hereby certify as follows:

1. The name of the Corporation is Kura Sushi USA, Inc.
2. On October 4, 2017, Kura Sushi USA, Inc. was formed by the filing of its original Certificate of Incorporation with the Secretary of State of Delaware. On October 10, 2017, Kura Sushi USA, Inc. was merged into Kura Sushi USA, Inc., the surviving corporation, and a Certificate of Merger was filed with the Secretary of State of Delaware. A Certificate of Amendment increasing the Corporation's number of authorized shares of Class A Common Stock was filed with the Secretary of State of Delaware on May 29, 2018.
3. Pursuant to Section 242 of the DGCL, the amendments and restatements herein set forth have been duly approved by the Board of Directors of the Corporation (the "**Board of Directors**") and the sole stockholder of the Corporation.
4. Pursuant to Section 245 of the DGCL, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the Corporation.

The text of the Restated Certificate of Incorporation is hereby amended and restated as follows:

**ARTICLE I**  
**NAME**

The name of the corporation is Kura Sushi USA, Inc.

**ARTICLE II  
AGENT**

The Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, DE 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV  
STOCK**

Section 4.1 Authorized Stock. Subject to Section 4.2(c)(ii) hereof, the aggregate number of shares which the Corporation shall have authority to issue is 61,000,100 shares, of which 50,000,000 shall be designated as Class A Common Stock, par value \$0.001 per share (the "**Class A Common Stock**"), and 10,000,100 shall be designated as Class B Common Stock, par value \$0.001 per share (the "**Class B Common Stock**" and together with the Class A Common Stock, the "**Common Stock**"), and 1,000,000 shall be designated as Preferred Stock, par value \$0.001 per share (the "**Preferred Stock**"). Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any of the Class A Common Stock, the Class B Common Stock or the Preferred Stock may be increased or decreased (but not below the number of shares of the Class A Common Stock, the Class B Common Stock or the Preferred Stock, as the case may be, then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing at least 66 $\frac{2}{3}$ % of the voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, on such increase or decrease irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law, and no vote of the holders of any of the Class A Common Stock, the Class B Common Stock or the Preferred Stock voting separately as a class shall be required therefor.

Section 4.2 Common Stock.

(a) Identical Rights. The powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions, of the Class A Common Stock and the Class B Common Stock shall be identical in all respects, except as otherwise required by law or expressly provided in this Amended and Restated Certificate of Incorporation. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of Preferred Stock of any series.

(b) Voting. Except as otherwise expressly provided herein or required by applicable law, the holders of Class A Common Stock and Class B Common Stock shall vote together as one class on all matters submitted to a vote of the stockholders.

(c) Votes Per Share. Except as otherwise expressly provided herein or required by applicable law, and subject to any voting rights of the holders of shares of any class or series of Preferred Stock, on any matter that is submitted to a vote of the stockholders, each holder of Class A Common Stock shall be entitled to one (1) vote for each such share, and each holder of Class B Common Stock shall be entitled to ten (10) votes for each such share.

(d) Conversion.

(i) Voluntary Conversion. Each share of Class B Common Stock shall be convertible, at the option of the holder thereof at any time and from time to time, into one fully paid and non-assessable share of Class A Common Stock. Such right shall be exercised by the surrender to the Corporation of the certificate or certificates, if any, representing the shares of Class B Common Stock to be converted at any time during normal business hours at the office of the Corporation's transfer agent (the "**Transfer Agent**"), accompanied by a written notice from the holder of such shares stating that such holder desires to convert such shares, or a stated number of the shares represented by such certificate or certificates, if any, into an equal number of shares of Class A Common Stock, and (if so required by the Transfer Agent) by instruments of transfer, in form satisfactory to the Transfer Agent, duly executed by such holder or such holder's duly authorized attorney, and transfer tax stamps or funds therefor if required pursuant to this Section 4.2(d). To the extent permitted by law, such conversion shall be deemed to have been effected at 5:00 p.m. Pacific Time on the date of such surrender.

(ii) Automatic Conversion. Each share of Class B Common Stock shall automatically be converted into one fully paid and non-assessable share of Class A Common Stock upon the earliest of (A) the date such shares cease to be beneficially owned (as such term is defined under Rule 13d-3 of the Securities Exchange Act of 1934, as amended ("**Section 13(d)**") by Kura Sushi, Inc. ("**Kura Japan**") and (B) at 5:00 p.m. Pacific Time on the date that Kura Japan ceases to beneficially own (as such term is defined under Section 13(d)) at least 20% of the number of the then-outstanding shares of Common Stock of the Corporation.

(iii) Immediately upon conversion of shares of Class B Common Stock, the rights of the holders of shares of Class B Common Stock as such shall cease, and such holders shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock. The issuance of certificates, if any, for shares of Class A Common Stock upon conversion of shares of Class B Common Stock shall be made without charge to the holders of such shares for any stamp or other similar tax in respect of such issuance; *provided, however*, that if any such certificate is to be issued in a name other than that of the holder of the share or shares of Class B Common Stock converted, then the individual, entity or other person holding such shares of Class B Common Stock immediately prior to such conversion shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of the Corporation that such tax has been paid or is not payable.



(iv) The one-to-one conversion ratio for the conversion of the Class B Common Stock into Class A Common Stock in accordance with this Section 4.2(d) of this Article IV shall in all events be equitably adjusted in the event of any recapitalization of the Corporation by means of a stock dividend on, or a stock split or combination of, outstanding Class A Common Stock or Class B Common Stock, or in the event of any merger, consolidation or other reorganization of the Corporation with another corporation.

(v) If any shares of Class B Common Stock shall be converted pursuant to this Section 4.2(d), the shares so converted shall be cancelled, retired and eliminated from the shares that the Corporation shall be authorized to issue.

(vi) Reservation of Stock Issuable upon Conversion. If at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Class B Common Stock, in addition to such other remedies as shall be available to the holders of such Class B Common Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(e) Dividends. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, no dividend or distribution may be declared or paid on any share of Class A Common Stock unless a dividend or distribution, payable in the same consideration and manner, is simultaneously declared or paid, as the case may be, on each share of Class B Common Stock, nor shall any dividend or distribution be declared or paid on any share of Class B Common Stock unless a dividend or distribution, payable in the same consideration and manner, is simultaneously declared or paid, as the case may be, on each share of Class A Common Stock, in each case without preference or priority of any kind; provided, however, that if dividends are declared that are payable in shares of Class A Common Stock or in shares of Class B Common Stock, as the case may be, or in rights, options, warrants or other securities convertible into or exercisable or exchangeable for shares of Class A Common Stock or shares of Class B Common Stock, such dividends shall be declared at the same rate on both classes of Common Stock and the dividends payable in shares of Class A Common Stock or in rights, options, warrants or other securities convertible into or exercisable or exchangeable for shares of Class A Common Stock shall be payable to holders of Class A Common Stock and the dividends payable in shares of Class B Common Stock or in rights, options, warrants or other securities convertible into or exercisable or exchangeable for shares of Class B Common Stock shall be payable to holders of Class B Common Stock.

(f) Changes in Common Stock. If the Corporation in any manner subdivides or combines the then-outstanding shares of Class A Common Stock, the then-outstanding shares of Class B Common Stock shall be proportionately subdivided or combined, as the case may be. If the Corporation in any manner subdivides or combines the then-outstanding shares of Class B Common Stock, the then-outstanding shares of Class A Common Stock shall be proportionately subdivided or combined, as the case may be.

(g) Reorganization, Consolidation, Share Exchange or Merger. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, in the event of any reorganization, consolidation, share exchange or merger of the Corporation with or into any other person or persons in which shares of Class A Common Stock or Class B Common Stock are converted into (or entitled to receive with respect thereto) shares of capital stock or other securities or property (including cash), each holder of a share of Class A Common Stock and each holder of a share of Class B Common Stock shall be entitled to receive with respect to each such share the same kind and amount of shares of capital stock and other securities and property (including cash), other than a difference in kind or amount of capital stock and other securities received that is limited to preserving the relative voting power of the holders of Class A Common Stock and Class B Common Stock in effect prior to any such transaction, unless the different treatment of the shares of each such class of Common Stock is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock entitled to vote thereon and a majority of the outstanding shares of Class B Common Stock entitled to vote thereon, each voting separately as a class. In the event that the holders of shares of Class A Common Stock or shares of Class B Common Stock are granted rights to elect to receive one of two or more alternative forms of consideration in respect of any such transaction, the foregoing provision shall be deemed satisfied if holders of shares of Class A Common Stock and holders of shares of Class B Common Stock, as the case may be, are granted substantially identical election rights.

(h) Liquidation. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Class A Common Stock and Class B Common Stock shall rank *pari passu* with each other and shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

Section 4.3 Preferred Stock. Subject to limitations prescribed by law and the provisions of this Article IV, the Board of Directors is hereby authorized to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(i) the number of shares constituting such series, including any increase or decrease in the number of shares of any such series (but not below the number of shares in any such series then outstanding), and the distinctive designation of such series;

(ii) the dividend rate on the shares of such series, if any, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

(iii) whether the shares of such series shall have voting rights (including multiple or fractional votes per share) in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(iv) whether the shares of such series shall have conversion privileges, and, if so, the terms and conditions of such privileges, including provisions for the adjustment of the conversion rate in such events as the Board of Directors shall determine:

(v) whether or not the shares of such series shall be redeemable, and if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption rates;

(vi) whether a sinking fund shall be provided for the redemption or purchase of shares of such series, and, if so, the terms and the amount of such sinking fund;

(vii) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of such series; and

(viii) any other relative rights, preferences and limitations of such series.

## **ARTICLE V BOARD OF DIRECTORS**

Section 5.1 Number. Except as otherwise provided for or fixed pursuant to the provisions of Article IV of this Amended and Restated Certificate of Incorporation relating to the rights of holders of any series of Preferred Stock to elect additional directors in certain circumstances, the number of directors which constitute the Board of Directors shall be designated or provided for in the bylaws of the Corporation.

Section 5.2 Vacancies. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law, be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director so chosen shall hold office until the next annual meeting of the stockholders or until his or her successor is duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 5.3 Removal. Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV hereof, any director, or the entire Board of Directors, may be removed from office at any time, (i) for cause only by the affirmative vote of the holders of a majority of the voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class or (ii) without cause only by the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 5.4 Additional Directors. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions and (ii) each such additional directors shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to such director's earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, disqualification, resignation or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of the Corporation shall be reduced accordingly.

Section 5.5 Powers. Except as otherwise expressly provided by the DGCL or this Amended and Restated Certificate of Incorporation, the management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors.

Section 5.6 Election. Subject to this Article V, the election of directors may be conducted in any manner approved by the person presiding at a meeting of the stockholders or the directors, as the case may be, at the time when the election is held and need not be by written ballot. The stockholders do not have the right to cumulate their votes for the election of directors.

Section 5.7 Notice. Advance notice of stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the bylaws of the Corporation.

## **ARTICLE VI LIABILITY OF DIRECTORS**

Section 6.1 Limitation of Personal Liability. To the fullest extent permitted by the DGCL, a director of the Corporation shall not be liable to the Corporation or its stockholders for

monetary damages for breach of fiduciary duty as a director. If the DGCL is amended after the date of the filing of this Amended and Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended from time to time.

Section 6.2 Indemnification. To the fullest extent permitted by the DGCL, the Corporation shall provide indemnification of (and advancement of expenses to) directors and officers of the Corporation through bylaw provisions, agreements with such persons, vote of stockholders or disinterested directors or otherwise. Any repeal or modification of this provision shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

## **ARTICLE VII STOCKHOLDER ACTION**

For such time as Kura Japan beneficially owns greater than 50% of the voting power of outstanding Common Stock of the Corporation, any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

## **ARTICLE VIII SPECIAL MEETINGS OF STOCKHOLDERS**

Subject to any rights of any series of Preferred Stock and the requirements of applicable law, special meetings of the stockholders of the Corporation for any purpose or purposes may be called only by or at the direction of the Board of Directors pursuant to a resolution of the Board of Directors adopted by a majority of the total number of directors then in office. The stockholders of the Corporation do not have the power to call a special meeting of the stockholders. Except as otherwise required by law, the business conducted at a special meeting of stockholders of the Corporation shall be limited exclusively to the business set forth in the Corporation's notice of meeting, and the individual or group calling such meeting shall have exclusive authority to determine the business included in such notice. Any special meeting of the stockholders shall be held either within or without the State of Delaware, at such place, if any, and on such date and time as shall be specified in the notice of such special meeting. The bylaws of the Corporation may establish procedures regulating the submission by stockholders of nominations and proposals for consideration at meetings of stockholders of the Corporation.

## **ARTICLE IX BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS**

The Corporation hereby expressly states that it shall not be bound or governed by, or otherwise subject to, Section 203 of the DGCL.

**ARTICLE X  
EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE XI  
AMENDMENTS**

Section 11.1 Amendment of Amended and Restated Certificate of Incorporation. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation; *provided, however*, that in addition to any requirements of law and any other provision of this Amended and Restated Certificate of Incorporation, and notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, change or repeal any provision of this Amended and Restated Certificate of Incorporation.

Section 11.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to amend, alter, change or repeal the bylaws of the Corporation. In addition to any requirements of law and any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation, and notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to amend, alter, change or repeal any provision of the bylaws of the Corporation.

**ARTICLE XII  
FORUM FOR ADJUDICATION OF DISPUTES**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

**ARTICLE XIII**  
**CERTAIN CONTRACTS; CORPORATE OPPORTUNITIES**

Section 13.1 Regulation of Certain Affairs. In anticipation that:

- (a) the Corporation will cease to be a wholly owned subsidiary of Kura Japan, but that Kura Japan will remain, for some period of time, a stockholder of the Corporation;
- (b) the Corporation and Kura Japan may engage in the same or similar activities or lines of business and have an interest in the same or similar areas of corporate opportunities;
- (c) certain persons may serve as both a director on the Board of Directors and a director on the board of directors for Kura Japan; and
- (d) there will be benefits to be derived by the Corporation through its contractual, corporate and business relations with Kura Japan (including possible service of officers and directors of Kura Japan as officers and directors of the Corporation) and there will be benefits in providing guidelines for directors and officers of Kura Japan and of the Corporation with respect to the allocation of corporate opportunities and other matters;

the provisions of this Article XIII are set forth to regulate, define and guide the conduct of certain affairs of the Corporation as they may involve Kura Japan and its officers and directors, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith; *provided, however*, that nothing in this Article XIII will impair the Corporation's ability to enter into contractual arrangements with a stockholder of the Corporation, which arrangements restrict the stockholder from engaging in activities otherwise allowed by this Article XIII, and the following provisions shall be subject to any such contractual obligation of the Corporation.

Section 13.2 Certain Contracts. To the fullest extent permitted by law, no contract, agreement, arrangement, or transaction between the Corporation and Kura Japan shall be void or voidable solely for the reason that Kura Japan is a party thereto. To the fullest extent permitted by applicable law, no such contract, agreement, arrangement or transaction (of the performance thereof) shall be considered to be contrary to any fiduciary duty owed to the Corporation or to any stockholder of the Corporation by (a) Kura Japan or (b) any officer or director of the Corporation who is also a director or officer of Kura Japan, and each such person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and shall be deemed not to have breached his or her duties of loyalty to the Corporation and its stockholders, and not to have derived an improper personal benefit therefrom, in each case, if the material facts as to the contract, agreement, arrangement or transaction are disclosed or are known to the Board of Directors or the committee thereof that authorizes the contract, agreement, arrangement or transaction, and the Board of Directors or such committee in good faith authorizes the contract, agreement, arrangement or transaction by the affirmative vote of a majority of the disinterested directors,

even though less than a quorum. Directors of the Corporation who are also directors or officers of Kura Japan may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract, agreement, arrangement or transaction.

Section 13.3 Competition and Corporate Opportunities. Subject to any contractual provisions to the contrary, Kura Japan shall, to the fullest extent permitted by law, have no duty hereunder to refrain from, (a) engaging in the same or similar activities or lines of business as the Corporation; (b) doing business with any potential or actual customer or supplier of the Corporation; or (c) employing or otherwise engaging any officer, director or employee of the Corporation. To the fullest extent permitted by law, neither Kura Japan nor any officer or director thereof (except as provided in this Article) shall be deemed to have breached its fiduciary duties, if any, to the Corporation or its stockholders solely by reason of such activities of Kura Japan, or such person's participation therein.

In the event that Kura Japan acquires knowledge of a potential transaction or matter which may be a corporate opportunity for both Kura Japan and the Corporation, Kura Japan shall have no duty to communicate or present such corporate opportunity to the Corporation, and shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder of the Corporation by reason of the fact that Kura Japan pursues or acquires such corporate opportunity for itself, directs such corporate opportunity to another person, or does not communicate information regarding such corporate opportunity to the Corporation.

Section 13.4 Allocation of Corporate Opportunities. In the event that a director or officer of the Corporation who is also a director or officer of Kura Japan acquires knowledge of a potential transaction or matter which may be a corporate opportunity for both the Corporation and Kura Japan, to the fullest extent permitted by law, such director or officer of the Corporation:

(a) shall be deemed to have fully satisfied and fulfilled such person's fiduciary duty to the Corporation and its stockholders with respect to such corporate opportunity;

(b) shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty by reason of the fact that Kura Japan pursues or acquires such corporate opportunity for itself or directs such corporate opportunity to another person (including, without limitation, Kura Japan);

(c) shall be deemed to have acted in good faith and in a manner such person reasonably believes to be in or not opposed to the best interests of the Corporation; and

(d) shall be deemed not to have breached such person's duty of loyalty to the Corporation or its stockholders and not to have derived an improper personal economic gain or other benefit therefrom, if such director or officer acts in a manner consistent with the following policy:



(i) a corporate opportunity offered to any person who is an officer or employee (whether or not a director) of the Corporation, and who is also a director but not an officer or employee of Kura Japan, shall belong to the Corporation, unless such opportunity is expressly offered to such person primarily in his or her capacity as a director of Kura Japan, in which case such opportunity shall belong to Kura Japan;

(ii) a corporate opportunity offered to any person who is a director but not an officer or employee of the Corporation, and who is also an officer or employee (whether or not a director) of Kura Japan shall belong to Kura Japan unless such opportunity is expressly offered to such person primarily in his or her capacity as a director of the Corporation, in which case such opportunity shall belong to the Corporation;

(iii) a corporate opportunity offered to any person who is either (1) an officer or employee of both the Corporation and Kura Japan; or (2) a director of both the Corporation and Kura Japan (but not an officer or employee of the Corporation or Kura Japan), shall belong to Kura Japan unless such opportunity is expressly offered to such person primarily in his or her capacity as a director of the Corporation, in which case such opportunity shall belong to the Corporation.

Section 13.5 Non-Pursuit. Any corporate opportunity that belongs to Kura Japan or to the Corporation pursuant to the foregoing policy shall not be pursued by the other, unless and until the party to whom the opportunity belongs determines not to pursue the opportunity and so informs the other party.

Section 13.6 Deemed Notice. Any person or entity purchasing or otherwise acquiring any interest in any shares of the capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XIII.

Section 13.7 Chairperson or Chairperson of a Committee. For purposes of this Article, a director who is chairperson of the Board of Directors is not deemed an officer of the Corporation by reason of holding that position unless that person is a full-time employee of the Corporation.

Section 13.8 Expiration of Certain Provisions. Notwithstanding anything in this Amended and Restated Certificate of Incorporation to the contrary, (a) this Article XIII shall expire on the date that Kura Japan ceases to beneficially own shares representing at least 5% of the voting power of the outstanding Common Stock and no person who is a director or officer of the Corporation is also a director or officer of Kura Japan; and (b) in addition to any vote of the stockholders required by this Amended and Restated Certificate of Incorporation, until the time that Kura Japan ceases to beneficially own shares representing at least 5% of the voting power of the outstanding Common Stock, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the outstanding Common Stock entitled to vote thereon shall be required to alter, amend, repeal (by merger or otherwise, in a manner adverse to the interests of Kura Japan) or adopt any provision adverse to the interests of Kura Japan and inconsistent with any provision of this Article XIII.

Neither the alteration, amendment or repeal of this Article XIII nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article XIII shall eliminate or reduce the effect of this Article XIII in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article XIII, would accrue or arise, prior to such alteration, amendment, repeal or adoption. Following the time that Kura Japan ceases to beneficially own shares representing at least 5% of the voting power of the outstanding Common Stock, any contract, agreement, arrangement or transaction involving a corporate opportunity shall not by reason thereof result in any breach of any fiduciary duty or duty of loyalty or failure to act in good faith or in the best interests of the Corporation or derivation of any improper benefit or personal economic gain, but shall be governed by the other provisions of this Amended and Restated Certificate of Incorporation, the bylaws, the DGCL and other applicable law.

#### **ARTICLE XIV REVERSE STOCK SPLIT**

Section 14.1 Reverse Stock Split. Effective upon the filing with the Secretary of State of Delaware of this Amended and Restated Certificate of Incorporation (the “**Effective Time**”), without any further action on the part of any stockholders of the Corporation, a reverse stock split of the Corporation’s outstanding Common Stock shall be effected whereby every one share of issued and outstanding Common Stock shall be reconstituted and exchanged for two shares of Common Stock.

Section 14.2 No Fractional Shares. No fractional share of Common Stock shall be issued as a result of the reverse stock split effected pursuant to Section 14.1 above. A holder of Common Stock at the Effective Time who would otherwise be entitled to a fraction of a share of Common Stock as a result of the reverse stock split effected pursuant to Section 14.1 above shall, in lieu thereof, be entitled to receive a cash payment in an amount equal to the fraction to which the stockholder would otherwise be entitled multiplied by the per share fair market value of such Common Stock at the Effective Time, as determined in good faith by the Board of Directors of the Corporation.

Section 14.3 Reference to Numbers. All references to dollar amounts and to numbers and amounts of shares of Common Stock set forth in this Amended and Restated Certificate of Incorporation shall be deemed to include and reflect the effect of the reverse stock split set forth in Section 14.1 above and shall not be further adjusted as a result thereof.

IN WITNESS WHEREOF, Kura Sushi USA, Inc. has caused this certificate to be signed by Hajime Uba, its President, on this 30th day of July, 2019.

KURA SUSHI USA, INC.

By: /s/ Hajime Uba

Hajime Uba, President

## AMENDED AND RESTATED

## BYLAWS OF

## KURA SUSHI USA, INC.

ARTICLE I  
CORPORATE OFFICES

Section 1.1 Registered Office. The registered office of Kura Sushi USA, Inc. (the “**Corporation**”) shall be fixed in the Corporation’s Certificate of Incorporation, as the same may be amended from time to time.

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as may otherwise be required by law, at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II  
MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as may be determined by the Board of Directors. The Board of Directors may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

Section 2.2 Special Meetings. A special meeting of the stockholders may be called at any time only by the Board of Directors, or by the Chairperson of the Board of Directors or the Chief Executive Officer with the concurrence of a majority of the Board of Directors. The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

Section 2.3 Notice of Stockholders’ Meetings.

(a) Notice of the place, if any, date, and time of all meetings of the stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law. In the case of a special meeting, the purpose or purposes for which the meeting is called also

shall be set forth in the notice. Notice may be given personally, by mail or by electronic transmission (“**electronic transmission**”) in accordance with Section 232 of the General Corporation Law of the State of Delaware (the “**DGCL**”). If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder’s address appearing on the books of the Corporation or given by the stockholder for such purpose. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit of the mailing or other means of giving any notice of any stockholders’ meeting, executed by the Secretary, Assistant Secretary or any transfer agent of the Corporation giving the notice, shall be *prima facie* evidence of the giving of such notice or report. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the “householding” rules set forth in Rule 14a-3(e) under the Securities and Exchange Act of 1934, as amended (the “**Exchange Act**”) and Section 233 of the DGCL.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided, however*, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally called, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.7(a) of these Bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

(c) Notice of any meeting of stockholders may be waived in writing, either before or after the meeting, and to the extent permitted by law, will be waived by any stockholder by attendance thereat, in person or by proxy, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

#### Section 2.4 Organization.

(a) Meetings of stockholders shall be presided over by the Chairperson of the Board of Directors, if any, the Chief Executive Officer (in the absence of the Chairperson of the Board of Directors) or the President in the absence of the Chairperson of the Board of Directors and the Chief Executive Officer, or in their absence any other executive officer of the Corporation designated by the Board of Directors. The Secretary, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairperson of the meeting shall appoint, shall act as Secretary of the meeting and keep a record of the proceedings thereof.

(b) The Board of Directors, and the chairperson of any meeting, each shall have the authority to adopt and enforce such rules or regulations for the conduct of meetings of

stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting further shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as such chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted for consideration of each agenda item and for questions and comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. The chairperson of any stockholder meeting shall have the power to adjourn the meeting to another place, if any, date or time.

Section 2.5 List of Stockholders. The officer who has charge of the stock ledger shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, *provided, however*, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (b) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. At any meeting of stockholders, the holders of a majority in voting power of all issued and outstanding stock entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business; *provided* that where a separate vote by a class or series is required, the holders of a majority in voting power of all issued and outstanding stock of such class or series entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the chairperson of the meeting or the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time in accordance with Section 2.7, without notice other than announcement at the

meeting and except as provided in Section 2.3(b), until a quorum is present or represented. If a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment may be transacted.

Section 2.7 Adjourned Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned for any reason from time to time by the chairperson of the meeting. At any such adjourned meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting.

(a) At all meetings of stockholders, each stockholder shall be entitled to such number of votes, if any, for each share of stock entitled to vote and held of record by such stockholder as may be fixed in the Certificate of Incorporation, subject to any powers, restrictions or qualifications set forth in the Certificate of Incorporation.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock entitled to vote thereat and with respect to the matter on which a vote is taken, present in person or represented by proxy, and where a separate vote by class or series is required, if a quorum of such class or series is present, such act shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock of such class or series entitled to vote thereat with respect to the matter on which a vote is taken, present in person or represented by proxy.

Section 2.9 Proxies. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy by the stockholder or the stockholder's attorney-in-fact. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the Corporation.

Section 2.10 Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors (or any committee thereof) or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (2) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected and (3) such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner,

(2) the class and number of shares of capital stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of capital stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below), and

(3) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such nomination or business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the business is proposed, as to such beneficial owner:

(1) the class and number of shares of capital stock of the Corporation which are beneficially owned (as defined below) by such stockholder or beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of capital stock of the Corporation beneficially owned by such stockholder or beneficial owner as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder or beneficial owner and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder or beneficial owner) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),

(3) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 2.10(a)(iii) below),



(iii) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation, including information relevant to a determination whether such proposed nominee can be considered an independent director. Notwithstanding anything in Section 2.10(a)(ii) above to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10(a) shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10, and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(b) Special Meeting. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors (or any committee thereof) or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 2.10. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by paragraph (a)(ii) of this Section 2.10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise provided by law, the Board of Directors shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by this Section 2.10). If any proposed nomination or business was not made or proposed in compliance with this Section 2.10, then except as otherwise provided by law, the chairperson of the meeting shall have the power and duty to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, if the stockholder does not provide the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the times frames specified herein, as the case may be, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting by such stockholder stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, a "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as "beneficially owned" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the right to vote such shares, alone or in concert with others and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

Section 2.11 Action by Written Consent.

(a) To the extent permitted by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of issued and outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. To be effective, a written consent must be delivered to the Corporation by delivery to its registered office, its principal place of business or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section 2.11 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation in accordance with this Section 2.11.

(b) Any electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for purposes of this Section 2.11, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Except to the extent and in the manner authorized by the Board of Directors, no consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office, its principal place of business or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

(c) Any copy, facsimile, or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile, or other reproduction shall be a complete reproduction of the entire writing.

(d) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation in the manner required by this Section 2.11.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Board of Directors shall appoint one or more inspectors of election to act at the meeting or its adjournment. If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy. Inspectors need not be stockholders. No director or nominee for the office of director shall be appointed such an inspector.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (b) receive votes, ballots or consents;
- (c) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) count and tabulate all votes or consents;
- (e) determine when the polls shall close;
- (f) determine the result; and
- (g) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. Any report or certificate made by the inspectors of election shall be *prima facie* evidence of the facts stated therein.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

### **ARTICLE III DIRECTORS**

Section 3.1 Powers. Subject to the provisions of the DGCL and to any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders, the business and affairs of the Corporation shall be managed and shall be exercised by or under the direction of the Board of Directors.

Section 3.2 Number, Term of Office and Election. The Board of Directors shall consist of not fewer than 3 nor more than 11 directors, each of whom shall be a natural person. Unless the Certificate of Incorporation fixes the number of directors, the exact number of directors shall be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Vacancies. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law, be filled solely by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum, and shall hold office until the next annual meeting of the stockholders or until his or her successor is duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

#### Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairperson of the Board of Directors, the Secretary or another person designated by the Board of Directors. Such resignation shall take effect upon delivery unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation, any director, or the entire Board of Directors, may be removed from office at any time, (i) for cause only by the affirmative vote of the holders of a majority of the voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class or (ii) without cause only by the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of all the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors; *provided* that no fewer than one regular meeting per year shall be held. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairperson of the Board of Directors, the Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director as his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director at such place by facsimile, electronic transmission or other form of recorded communication, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. Notice of any meeting need not be given to any director who shall, either before or after the meeting, submit a waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to such director. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a majority of the authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. The chairperson of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. If a quorum initially is present at any meeting of directors, the directors may continue to transact business, notwithstanding the withdrawal of enough directors to leave less than a quorum, upon resolution of at least a majority of the required quorum for that meeting prior to the loss of such quorum.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, *provided* that all members of the Board of Directors consent in writing or by electronic transmission to such action, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 3.10 Chairperson of the Board. The Chairperson of the Board, if any, shall preside at meetings of stockholders and directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairperson of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the Board of Directors. This Section 3.12 shall not be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

Section 3.13 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

#### **ARTICLE IV COMMITTEES**

Section 4.1 Committees of the Board of Directors. The Board of Directors may, by resolution, designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly

required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. Any such committee shall have the authority to delegate its authority to sub-committees as permitted by the charter of such committee. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Any committee of the Board of Directors may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper.

## **ARTICLE V OFFICERS**

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer, one or more Vice Presidents, a Secretary, and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal. Any two of such offices may be held by the same person; *provided, however*, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers.

Section 5.2 Compensation. The Board of Directors may establish the salaries of the officers of the Corporation and the manner and time of the payment of such salaries may be fixed and determined by the Board of Directors or the Board of Directors may delegate such authority, in the case of salaries of officers that are not executive officers, to one or more executive officers of the Corporation. The salaries of the officers of the Corporation may be altered by the Board of Directors or such persons that have been delegated authority pursuant to this Section 5.2 from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon written notice to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for



corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer.

Section 5.5 President. The President shall exercise general responsibility for the management and control of the operations of the Corporation, in coordination with the other officers of the Corporation. The President shall have the power to affix the signature of the Corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.6 Chief Operating Officer. The Chief Operating Officer shall exercise general responsibility for the management and control of the operations of the Corporation, in coordination with the other officers of the Corporation. The Chief Operating Officer shall have the power to affix the signature of the Corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The Chief Operating Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.7 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.8 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.9 Vice Presidents. A Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.10 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.11 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.12 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.13 Action with Respect to Securities of Other Corporations. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

## ARTICLE VI INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1 Right to Indemnification. Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute mechanism, inquiry, judicial, administrative or legislative hearing, investigation or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "**proceeding**"), to which such person was or is a party or is threatened to be made a party or is otherwise involved in by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint

venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “**indemnitee**”), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith; *provided, however*, that, except as otherwise required by law or provided in Section 6.3 with respect to proceedings to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (i) such indemnitee, or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent not prohibited by law, also have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding with respect to which indemnification is required under Section 6.1 in advance of its final disposition (hereinafter an “**advancement of expenses**”); *provided, however*, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “**undertaking**”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a “**final adjudication**”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.2 or otherwise.

(b) Notwithstanding the foregoing Section 6.2(a), the Corporation shall not make or continue to make advancements of expenses to an indemnitee (except by reason of the fact that the indemnitee is or was a director of the Corporation, in which event this Section 6.2(b) shall not apply) if a determination is reasonably made that the facts known at the time such determination is made demonstrate clearly and convincingly that the indemnitee acted in bad faith and in a manner that the Indemnitee did not believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe his or her conduct was unlawful. Such determination shall be made: (i) by the Board of Directors by a majority vote of directors who are not parties to such proceeding, whether or not such majority constitutes a quorum, (ii) by a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee.

Section 6.3 Right of Indemnitee to Bring Suit. If a request for indemnification under Section 6.1 is not paid in full by the Corporation within 60 days, or if a request for an advancement of expenses under Section 6.2 is not paid in full by the Corporation within 20 days,

after a written request has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification described above. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct described above, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or directors, provisions of the Certificate of Incorporation or these Bylaws or otherwise.

Section 6.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VI with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 6.7 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights that shall vest at the time an individual becomes a director or officer of the Corporation and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal. The indemnity obligations of the Corporation contained in this Article VI shall be binding upon all successors and assigns of the Company (including any transferee of all or substantially all of its assets and any successor by merger or operation of law).

Section 6.8 Settlement of Claims. The Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, or for any judicial or arbitral award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such proceeding. The Corporation shall not settle any proceeding in any manner that would impose any penalty or limitation on or disclosure obligation with respect to the indemnitee without the indemnitee's written consent. Neither the Corporation nor the indemnitee shall unreasonably withhold its consent to any proposed settlement.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.10 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest enforceable extent.

Section 6.11 Procedures for Submission of Claims. The Board of Directors may establish reasonable procedures for the submission of claims for indemnification pursuant to this Article VI, determination of the entitlement of any person thereto and review of any such determination. Such procedures shall be deemed for all purposes to be a part of these Bylaws.

## **ARTICLE VII CAPITAL STOCK**

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairperson or Vice Chairperson of the Board of Directors, if any, or the President or a Vice President, and by the Secretary or an Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock, if such stock is certificated; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Section 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. If represented by certificates, transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary or a transfer agent for such stock, and upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; *provided, however*, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. If uncertificated, shares of capital stock of the Corporation shall be transferable only upon delivery of a duly executed instrument of transfer. If the Corporation has a transfer agent or

agents or transfer clerk and registrar of transfers acting on its behalf, the signature of any officer or representative thereof may be in facsimile. The Board of Directors may appoint a transfer agent and one or more co-transfer agents and a registrar and one or more co-registrars of transfer and may make or authorize the transfer agents to make all such rules and regulations deemed expedient concerning the issue, transfer and registration of shares of stock.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or new certificate for any other security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to such stockholder and, if any stockholder shall fail to so designate such an address, corporate notices may be served upon such stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such stockholder.

Section 7.6 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 7.7 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of

stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than 60 days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.8 Regulations. The Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

## **ARTICLE VIII GENERAL MATTERS**

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall be the 12-month period ending on August 31 of each calendar year, or such other period as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by an Assistant Secretary.

Section 8.3 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records.

Section 8.4 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.5 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation and applicable law.



**ARTICLE IX  
FORUM FOR ADJUDICATION OF DISPUTES**

Section 9.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX.

**ARTICLE X**

Section 10.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. In addition to any requirements of law and any other provision of these Bylaws or the Certificate of Incorporation, and notwithstanding any other provision of these Bylaws, the Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to amend, alter, change or repeal any provision of these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors on July 18, 2019 and are effective as of August 5, 2019.

**SHARED SERVICES AGREEMENT**

This Shared Services Agreement (the “**Agreement**”) is made and entered into as of August 5, 2019, by and between Kura Sushi, Inc. (“**KURA**”), a Japanese corporation and Kura Sushi USA, Inc. (“**KSU**”), a Delaware corporation (collectively as the “**Parties**” and individually as a “**Party**”).

WHEREAS, KSU is a wholly-owned subsidiary of KURA;

WHEREAS, KURA currently provides certain strategic, managerial, operational and technical support services to KSU, and KSU currently provides certain administrative and market research support services to KURA;

WHEREAS, it is contemplated that an initial public offering will be made of a portion of the capital stock of KSU, resulting in a partial public ownership of KSU, and that KURA and KSU both desire for KURA to continue providing certain strategic, managerial, operational and technical support services to KSU following the initial public offering, and for KSU to continue providing certain administrative and market research support services to KURA; and

WHEREAS, KURA and KSU have entered into this Agreement to set forth the terms and conditions of the provision of such Services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KURA and KSU agree as follows:

1. Services. KURA and KSU shall provide the applicable services set forth in Exhibits 1 through 6 (the “**Services**”) which are attached to and made part of this Agreement. The Services shall be provided by KURA or KSU upon the other Party’s request. The Parties have made a good faith effort as of the date hereof to identify and accurately set forth all of the Services in the Exhibits. In the event that any Exhibit is incomplete, the Parties will use good faith efforts to mutually agree upon modification to the Exhibits. The Parties may also identify additional Services that they wish to incorporate into this Agreement by mutual agreement. The Parties will create additional Exhibits as necessary setting forth the description of such additional Services, the fees for such Services and any other applicable terms that are mutually agreed upon by the Parties.

2. Fees and Expenses.

2.1 In consideration of the provision of the Services by KURA or KSU to the other Party under this Agreement, each Party shall pay to the other Party the amounts set forth in the attached Exhibits (collectively, the “**Fees**”). The Fees will constitute full compensation to KURA or KSU for all charges, costs and expenses incurred by KURA or KSU on behalf of the other Party in providing the Services, unless otherwise specifically provided for in the Exhibits.

2.2 Each Party shall deliver to the other Party, on a monthly basis, an invoice for the aggregate Fees incurred for the previous month. Each Party agrees to pay the other Party, within thirty (30) days of invoicing, the Fees incurred during the previous month. Notwithstanding the foregoing, if a Party has a reasonable basis to believe that an invoice is incorrect, then such Party shall notify the other Party of the basis for its belief and the Parties shall reasonably cooperate to resolve such matter.

2.3 Each Party hereto shall be responsible for any and all taxes levied as a result of the performance of each Party's respective activities under this Agreement. For the avoidance of doubt, either Party may withhold from payments such taxes as are required to be withheld under applicable law, and shall not be required to pay any additional amounts with respect to such withholding. If any tax is withheld by a Party ("**Withholding Party**"), such Withholding Party shall provide to the other Party ("**Payee**") receipts or other evidence of such withholding and payment thereof to the appropriate tax authorities. The Withholding Party agrees not to withhold any taxes, or to withhold at a reduced rate, to the extent Payee is entitled to an exemption from, or reduction in the rate of, as appropriate, withholding under any applicable income tax treaty, provided that the Payee has provided the Withholding Party with appropriate certifications establishing such exemption or reduction in rate. If, after any remuneration is paid, it is determined by the appropriate taxing authorities that additional withholding taxes are due with respect to such withholding taxes, Payee shall directly pay such taxes or reimburse Withholding Party for any payment of such withholding taxes that Withholding Party makes (and shall provide the Withholding Party with receipts or other evidence of such payment thereof to the appropriate tax authorities).

3. Term, Termination.

3.1 This Agreement shall become effective upon the completion of the initial public offering of KSU (the "**Effective Date**") and shall remain in full force and effect until terminated by a written agreement between the Parties, unless terminated in accordance with Section 3.2 (the "**Term**").

3.2 This Agreement may be terminated by either Party if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days following receipt of notice of such breach.

3.3 KURA agrees that, upon termination of this Agreement or any of the Exhibits for any reason, KURA will cooperate in good faith with KSU to provide KSU (or its designee) with reasonable assistance to make an orderly transition from KURA to another provider of the Services. Transition assistance services shall include the following:

- (a) developing a transition plan with assistance from KSU or its designee;
- (b) providing training to KSU personnel or its designee's personnel to perform Services; and

(c) organizing and delivering to KSU records and documents necessary to allow continuation of the Services, including delivering such materials in electronic forms and versions as requested by KSU.

3.4 Termination of this Agreement shall be without prejudice to any rights or remedies that either Party may have for breach of this Agreement. Further, upon termination, all continuing duties set forth herein with respect to a Party's obligation to pay for Services rendered, shall continue notwithstanding such termination.

4. Cooperation. The Parties will use good faith efforts to cooperate with each other in all matters relating to the provision and receipt of the Services. Such good faith cooperation will include providing electronic access to systems used in connection with the Services and using commercially reasonable efforts to obtain all consents, licenses, sublicenses or approvals necessary to permit each Party to perform its obligations. The Parties will cooperate with each other in making such information available as needed in the event of any and all internal or external audits, whether in the U.S. or any other country.

5. Standard of Care. In providing the Services hereunder, each Party will exercise the same degree of care as it has historically exercised in providing such Services to the other Party and its affiliates prior to the date hereof, including at least the same level of quality, responsiveness and timeliness as has been exercised by KURA and KSU with respect to such Services.

6. Records. KURA and KSU shall each keep full and detailed records dealing with all aspects of the Services performed by it hereunder (the "Records") and:

(a) shall provide access to the Records to the other Party at all reasonable times; and

(b) shall maintain the Records in accordance with good record management practices and with at least the same degree of completeness and care as it maintains for its other similar business interests.

7. Confidentiality.

7.1 The Parties acknowledge that, from time to time, one Party (the "**Disclosing Party**") may disclose to the other Party (the "**Receiving Party**") information: (i) which is marked "confidential" or a similar legend, or (ii) which is described orally and designated as confidential, or (iii) which would, under the circumstances, be understood by a reasonable person to be confidential ("**Confidential Information**").

7.2 Except as otherwise provided herein, the Receiving Party shall retain such Confidential Information in confidence, and shall not disclose it to any third party or use it for any purpose other than for purposes of this Agreement without the Disclosing Party's prior written consent. Each Party shall use at least the same procedures and degree of care with respect to such Confidential Information that it uses to protect its own confidential information of like

importance, and in no event less than reasonable care. The Receiving Party will immediately give written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, and the Receiving Party will assist the Disclosing Party in remedying such unauthorized use or disclosure. Each Party may disclose Confidential Information to the extent required by law, including without limitation disclosure obligations imposed under the U.S. federal securities laws.

7.3 In the event that the Receiving Party or (to the knowledge of the Receiving Party) any of its representatives is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or other similar processes) to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such request or requirement sufficiently timely to allow the Disclosing Party adequate time to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

7.4 Notwithstanding the foregoing, Confidential Information will not include information to the extent that such information: (a) was generally available to the public at the time of its disclosure to the Receiving Party hereunder; (b) became generally available to the public after its disclosure other than through an act or omission of the Receiving Party in breach of this Agreement; or (c) was subsequently lawfully and independently disclosed to the Receiving Party by a person other than the Disclosing Party without an obligation of confidentiality.

8. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Neither Party is an agent, partner or employee of the other Party and neither Party has any right or any other authority to enter into any contract or undertaking in the name of or for the account of the other Party or to assume or create any obligation of any kind, express or implied, on behalf of the other Party, nor will the acts or omissions of either create any liability for the other Party. The Agreement shall in no way constitute or give rise to a partnership between the Parties.

9. Indemnification. Each Party (as "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other Party and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") 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, fees, and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, arising out of or resulting from any claim of a third party or the Indemnified Party arising out of or occurring in connection with the Indemnifying Party's negligence, willful misconduct, or breach of this Agreement.

10. Compliance with Laws. Each Party shall perform the Services in compliance with all applicable laws, regulations, and ordinances. Each Party shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

11. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

12. Survival. The terms and conditions of Sections 3.4, 6, 7, 9, 11, 12, 19, 20, 21, 24, as well as any other provision that, in order to give proper effect to its intent, should survive termination or expiration of this Agreement. In addition, the termination or expiration of this Agreement shall not relieve either Party of any liability under this Agreement that accrued prior to such termination or expiration.

13. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party.

14. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Assignment. Neither Party shall assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the assigning Party of any of its obligations under this Agreement.

17. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

18. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. Choice of Law. This Agreement, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

20. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement in any forum other than the state or federal courts in the State of California, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the state or federal courts in the State of California. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

21. Litigation. A Party may not bring a lawsuit or other action upon a cause of action under this Agreement more than one (1) year after the occurrence of the event giving rise to the cause of action.

22. Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall on a Saturday, Sunday or any public or legal holiday, whether local or national, the person having such privilege or duty shall have until midnight local time on the next succeeding business day to exercise such privilege, or to discharge such duty.

23. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

24. Governing Language. The Parties acknowledge that this Agreement may be translated into the Japanese language. The Parties agree that the English language version of this Agreement shall be the original, governing instrument and understanding of the parties, and any interpretation or construction of this Agreement shall be based on the English language version of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

**KURA SUSHI, INC.**

By: /s/ Hiroyuki Hisamune

Name: Hiroyuki Hisamune

Title: Managing Director

Date: August 5, 2019

**KURA SUSHI USA, INC.**

By: /s/ Hajime Uba

Name: Hajime Uba

Title: President/CEO

Date: August 5, 2019

EXHIBIT 1

I. DESCRIPTION OF SERVICES

KURA will assign, on a temporary basis, certain employees to work for KSU as expatriates (“**Expatriates**”), and such Expatriates will provide certain strategic, managerial, operational, and technical support to assist KSU with the operation of its business and restaurants throughout the United States.

II. SERVICE FEES

KSU shall reimburse KURA for such portion of each Expatriates’ salary and benefits as set forth in the then current version of KURA’s Expatriate Work Agreement, which shall promptly be provided to KSU upon revision.

III. ADDITIONAL TERMS

KURA shall invoice KSU for KSU’s portion of each Expatriates’ salary and benefits on a monthly basis.



EXHIBIT 2

I. DESCRIPTION OF SERVICES

KURA will send certain employees to assist KSU (“**Support Staff**”) on a short-term basis, and such Support Staff will provide the following services:

- A. operational and technical support for the opening of new restaurants throughout the United States;
- B. operational and technical support for the maintenance or renovation of existing restaurants throughout the United States; and
- C. any other services that the Parties may agree upon from time to time.

II. SERVICE FEES

KSU shall reimburse KURA for the travel expenses of such Support Staff, including airfare, hotels, meals and allowances during such business trips.

III. ADDITIONAL TERMS

KURA shall invoice KSU for the travel expenses of such Support Staff on a monthly basis.

EXHIBIT 3

I. DESCRIPTION OF SERVICES

KURA will provide KSU with certain parts and equipment for use in KSU's restaurants throughout the United States.

II. SERVICE FEES

KSU shall reimburse KURA for the actual costs of such parts and equipment.

III. ADDITIONAL TERMS

KURA shall invoice KSU for such parts and equipment on a monthly basis.

EXHIBIT 4

I. DESCRIPTION OF SERVICES

KURA will provide KSU with the following services:

- A. creative support services for Bikkura-Pon animation videos for use in KSU's restaurants throughout the United States;
- B. review of food ingredients used by KSU in the United States to ensure the absence of artificial additives;
- C. marketing and promotion support services, including but not limited to photography of menu items and provision of promotional materials
- D. procurement of supplies from Japanese vendors on KSU's behalf;
- E. creation of recipe and food preparation manuals;
- F. maintenance and repair of touch panel systems in KSU's restaurants;
- G. new product development support services, including but not limited to the development of new menu items;
- H. vendor support services, including but not limited to assisting KSU with the procurement of vinegar and dashi soy sauce from KURA's third party vendors for use in KSU's restaurants;
- I. data collection, including but not limited to customer surveys, plate consumption and disposal data, customer seating data and order history data processed through touch panel systems used for daily operations and employee evaluation purposes; and
- J. any other services that the Parties may agree upon from time to time.

II. SERVICE FEES

KSU shall reimburse KURA for any out of pocket costs incurred by KURA in connection with the provision of these services.

III. ADDITIONAL TERMS

KURA shall invoice KSU for such out of pocket costs on a monthly basis.

I. DESCRIPTION OF SERVICES

KSU will provide KURA with the following services:

- A. translation support services for English documents, including but not limited to KSU store leases and other documents relating to KSU's operation of restaurants throughout the United States;
- B. market research analyses relating to KSU's operation of restaurants throughout the United States, including but not limited to analyses regarding the opening of new restaurants and the performance of existing restaurants; and
- C. any other services that the Parties may agree upon from time to time.

II. SERVICE FEES

KURA shall reimburse KSU for any out of pocket costs incurred by KSU in connection with the provision of these services.

III. ADDITIONAL TERMS

KSU shall invoice KURA for such out of pocket costs on a monthly basis.

I. DESCRIPTION OF SERVICES

KURA will provide to KSU, on an exclusive basis, either directly or through one of its authorized suppliers, the following ingredients:

- A. Vinegar, made in accordance with KURA's proprietary Vinegar recipe
- B. Dashi Soy Sauce, made in accordance with KURA's proprietary Dashi Soy Sauce recipe

II. SERVICE FEES

KSU shall reimburse KURA for the actual costs of such ingredients.

III. ADDITIONAL TERMS

KURA shall invoice KSU for such ingredients on a monthly basis.

**AMENDED AND RESTATED EXCLUSIVE LICENSE AGREEMENT**

THIS AMENDED AND RESTATED EXCLUSIVE LICENSE AGREEMENT (“**Agreement**”) is entered into on August 5, 2019 (the “**Effective Date**”) by and between Kura Sushi, Inc. (“**Licensor**”), a Japanese corporation having its registered address at 1-2-2 Fukasaka, Naka-ku, Sakai-shi, Osaka and Kura Sushi USA, Inc. (“**Licensee**”), a Delaware corporation having its principal place of business at 17932 Sky Park Circle, Suite H, Irvine, CA 92614 (collectively as the “**Parties**” and individually as a “**Party**”).

**RECITALS**

WHEREAS, Licensor is the owner of certain proprietary intellectual property and technology (“**Licensed Intellectual Property**,” as further described in Exhibit A) used in the operation of Restaurants (as such term is defined below), and of Intellectual Property Rights (as such term is defined below) therein;

WHEREAS, Licensor wishes to grant a license under Licensor’s Intellectual Property Rights to use Licensed Intellectual Property in connection with the Licensee’s operation of Restaurants;

WHEREAS, Licensor has agreed to grant to Licensee, and Licensee has agreed to receive, a license to use such Licensed Intellectual Property under Licensor’s Intellectual Property Rights therein on the terms and conditions of this Agreement; and

WHEREAS, this Agreement is intended to replace that certain License Agreement between the Parties dated March 14, 2018;

NOW, THEREFORE, in consideration of these premises, and of the mutual promises hereinafter set forth, the Parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

These terms shall have the following meanings in this Agreement:

Section 1.1 Affiliate. “**Affiliate**” of a Party means any entity controlled by, controlling, or under common control with such Party, where “control” in any of the foregoing forms means ownership, either direct or indirect, of more than 50% of the equity interest entitled to vote for the election of directors or equivalent governing body. An entity shall be considered an Affiliate only so long as such entity continues to meet the foregoing definition.

Section 1.2 Confidential Information. “**Confidential Information**” shall have the meaning defined for that term in Article 6 (CONFIDENTIAL INFORMATION).

Section 1.3 Developed Technology. “**Developed Technology**” means all future technology created or developed by Licensee related to or derived from the Licensed Intellectual Property.

Section 1.4 Documentation. “**Documentation**” means any information, including, without limitation, instructions, manuals, work plans, online help files, or other materials, regarding the development, maintenance, or operation of the Restaurants, which have been delivered by Licensor to Licensee under this Agreement.

Section 1.5 Intellectual Property Rights. “**Intellectual Property Rights**” means any and all rights in the Territory that Licensor owns or has the right to license to Licensee (by whatever name or term known or designated) including, but not limited to rights in the following:

- (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, copyright registrations, and moral rights;
- (b) trademarks, service marks and trade name rights and similar rights, trade secret rights, and any registrations therefor;
- (c) patents, patent applications, and other patent rights, including reissues, divisions, continuations, continuations-in-part, extensions and reexaminations of any of the foregoing, covering Licensor’s patents set forth in Exhibit A;
- (d) all other intellectual and industrial property rights (of every kind and nature and however designated), including logos, “rental” rights and rights to remuneration, whether arising by operation of law, contract, license, or otherwise; and
- (e) any additional applicable intangible property as defined under U.S. Treasury Regulation Section 1.482-4(b) (whether or not in documentary form and whether or not patentable, copyrightable or otherwise protectable under applicable laws).

Section 1.6 Net Sales. “**Net Sales**” shall be determined in accordance with U.S. generally accepted accounting principles (“**GAAP**”) for financial reporting purposes and shall mean the sales recognized by or for the account of Licensee from the operation of Restaurants. “Net Sales” shall not include the following:

- (a) Any government taxes or levies collected from customers with respect to Restaurant sales that are to be paid over to any applicable governmental authority; or
- (b) Any portion of the sales from the operation of Restaurants that is discounted or refunded by Licensee to a customer; or
- (c) Any revenues from an Affiliate.

Section 1.7 Restaurants. “**Restaurants**” means Kura Revolving Sushi Bar restaurants within the Territory.

Section 1.8 Territory. “**Territory**” means the United States of America.

Section 1.9 Third Party. “**Third Party**” means and includes any individual, corporation, trust, estate, partnership, joint venture, company, association, league, governmental bureau or agency, or any other entity regardless of the type or nature, which is not a Party or an Affiliate.

## ARTICLE 2 LICENSE GRANTS

Section 2.1 License. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee during the term of this Agreement an exclusive, royalty-bearing, non-transferable, non-sublicensable license to use the Licensed Intellectual Property in connection with the operation of Restaurants within the Territory, including to:

- (a) make, use, offer to sell, sell, import, advertise, market, and distribute the products and provide the services listed on Exhibit B and any other products or services that the Parties may agree upon in writing from time to time (collectively, the “**Licensed Services**”);
- (b) use the marks listed in Exhibit A (the “**Licensed Marks**”) as part of Licensee’s corporate name, company name, or trade name, as applicable, in connection with the Restaurants and the Licensed Services;
- (c) reproduce, publicly perform, transmit, publicly display, and distribute, and create derivative works based on the works listed on Exhibit A in connection with the Restaurants and Licensed Services.

Section 2.2 Delivery of Intellectual Property Rights. Upon the Effective Date, and thereafter if appropriate, Licensor shall make available to Licensee such Documentation and other elements of the Licensed Intellectual Property as necessary or appropriate for Licensee’s operation of Restaurants under the license granted in Section 2.1 (License).

Section 2.3 Ownership of Future Rights. All rights, title and interest in and to any Developed Technology and all work in progress related thereto (collectively, the “**Future Rights**”) developed solely by Licensee shall be owned exclusively by Licensee.

## ARTICLE 3 RESERVATION OF RIGHTS AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Section 3.1 Retention of Legal Ownership. The legal ownership of the Intellectual Property Rights is and shall at all times remain with Licensor, and Licensee shall not at any time during or after the expiration or termination of this Agreement in any way question or dispute the ownership thereof by Licensor or its licensors.



Section 3.2 Reservation of Rights. The licenses granted in Section 2.1 (License) above are granted solely to Licensee, and not, by implication or otherwise, to any parent, subsidiary or Affiliate of Licensee. Upon termination of this Agreement, Licensor reserves the right to revoke, at its sole discretion, all licenses granted in Section 2.1 (License).

Section 3.3 Patent and Trademark Prosecution and Maintenance. Subject to Section 3.4, for each patent and trademark included within the Licensed Intellectual Property Rights, Licensor shall prosecute and maintain each such patent and trademark at its sole cost and expense.

Section 3.4 Abandonment. If Licensor plans to abandon any patent or trademark included within the Licensed Intellectual Property Rights in the Territory, Licensor shall notify Licensee in writing at least sixty (60) days in advance of the due date of any payment or other action that is required to prosecute and maintain such patent or trademark. Following such notice, Licensee will have the right, in its sole discretion, to assume control and direction of the prosecution and maintenance of such patent or trademark at its sole cost and expense, provided that Licensor shall at all times remain the owner of such patent or trademark, which will continue to be licensed under this Agreement.

Section 3.5 Quality.

(a) Quality Standards and Use Guidelines. Licensee acknowledges and is familiar with the high standards and reputation for quality symbolized by the Licensed Marks as of the Effective Date, and Licensee shall operate the Restaurants and use the Licensed Marks in a manner at least consistent with such quality standards and reputation. Licensee shall comply with Licensor's guidelines and specifications regarding the style, appearance, and usage of the Licensed Marks.

(b) Quality Control. Licensor may exercise quality control over all uses of the Licensed Marks under this Agreement to maintain the validity of the Licensed Marks and protect the goodwill associated therewith. For the purpose of monitoring Licensee's compliance with Licensor's quality standards and the other requirements set forth in this Section 3.5, at Licensor's reasonable request: (i) Licensor (or its representative) may inspect Licensee's facilities, on reasonable notice and during normal business hours; and (ii) Licensee shall submit to Licensor a representative sample of any use of the Licensed Marks by Licensee for Licensor's review and approval, subject to Section 3.5(c). Licensee acknowledges and agrees that, based on the special relationship of trust between the Parties, Licensor may reasonably rely on Licensee to perform any inspection or review necessary to ensure Licensee's compliance with Licensor's quality standards and the other requirements set forth in this Section 3.5.

(c) Approvals. Approval of any use by Licensee of the Licensed Marks, once given by Licensor, will continue in effect, without need for future approval, so long as Licensee's use of the Licensed Marks in connection with the Licensed Services of the Restaurants continues to be substantially consistent with such previously approved use.

Section 3.6 Notices; Patent Marking. Licensee shall ensure that all use of Licensed Intellectual Property hereunder is accompanied by or marked with the appropriate proprietary rights notices, symbols, and legends as may be reasonably necessary under applicable law to maintain the Intellectual Property Rights and Licensor's proprietary rights therein and in such order and manner as may be specified by Licensor. Without limiting the foregoing, Licensee shall comply with the patent marking provisions of 35 U.S.C. § 287(a) by marking all patented products covered by any patents licensed hereunder with the word "patent" or the abbreviation "pat." and either the relevant patent numbers or a web address that is freely accessible to the public and that lists the relevant patent numbers.

Section 3.7 Enforcement of Intellectual Property Rights.

(a) Notice of Infringement or Third-Party Claims. If either Party becomes aware of any actual, suspected, or threatened infringement, misappropriation, or other violation of any Licensed Intellectual Property and the Intellectual Property Rights by any third party in the Territory, or (b) any claim that any patent licensed hereunder is invalid or unenforceable, such Party shall promptly notify the other Party and provide it with all details of such infringement or claim, as applicable, that are known by such Party.

(b) Right to Bring Action or Defend. Licensor shall have the first right, but not the obligation, to bring an infringement action to enforce any Licensed Intellectual Property Rights, defend any declaratory judgment action concerning any Licensed Intellectual Property, and take any other lawful action reasonably necessary to protect, enforce, or defend any Licensed Intellectual Property and Licensed Intellectual Property Rights, and control the conduct thereof. If Licensor does not bring action with respect to any commercially significant third-party infringement within one hundred eighty (180) days of a request by Licensee, or earlier notifies Licensee in writing of its intent not to do so, then Licensee shall have the right, but not the obligation, to bring such an action and to control the conduct thereof.

(c) Cooperation, Recovery, and Settlement. In the event a Party undertakes the enforcement or defense of any Licensed Intellectual Property Rights in accordance with this Section 3.7:

(i) the other Party shall provide all reasonable cooperation and assistance, at the enforcing Party's expense, including providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and being joined as a party to such action as necessary to establish standing;

(ii) any recovery, damages, or settlement derived from such suit, action, or other proceeding will be applied first in satisfaction of any costs and expenses, including reasonable attorneys' fees, of the enforcing Party, with any remaining amounts shared seventy five percent (75%) Licensor and twenty-five percent (25%) Licensee; and

(iii) such Party may settle any such suit, action, or other proceeding, whether by consent order, settlement, or other voluntary final disposition, without the prior written approval of the other Party, provided that a Party shall not settle any such suit, action, or other proceeding in a manner that adversely affects the rights of the other Party with respect to the Licensed Technology or Licensed Intellectual Property Rights without the other Party's prior written consent.

**ARTICLE 4**  
**ROYALTIES AND OTHER OBLIGATIONS**

Section 4.1 Royalty. In consideration for the licenses granted under this Agreement, Licensee shall pay a royalty to Licensor at the rate of zero point five percent (0.5%) of Net Sales.

Section 4.2 Periodic Adjustment. The royalty percentage may be reviewed periodically by the Parties to ensure that it continues to reflect the arm's length value of the licenses and rights granted to Licensee under the terms of this Agreement.

Section 4.3 Invoicing and Payments. Licensor shall issue an invoice at the end of each month, setting forth the Net Sales and total royalties due for that month. Licensee shall make payment for each invoice within thirty (30) days of the invoice statement date. Licensee may offset amounts due under this Agreement by outstanding balances owed Licensee from Licensor.

Section 4.4 Taxes. Each Party hereto shall be responsible for any and all taxes levied as a result of the performance of each Party's respective activities under this Agreement. For the avoidance of doubt, either Party may withhold from payments such taxes as are required to be withheld under applicable law, and shall not be required to pay any additional amounts with respect to such withholding. If any tax is withheld by a Party ("**Withholding Party**"), such Withholding Party shall provide to the other Party ("**Payee**") receipts or other evidence of such withholding and payment thereof to the appropriate tax authorities. The Withholding Party agrees not to withhold any taxes, or to withhold at a reduced rate, to the extent Payee is entitled to an exemption from, or reduction in the rate of, as appropriate, withholding under any applicable income tax treaty, provided that the Payee has provided the Withholding Party with appropriate certifications establishing such exemption or reduction in rate. If, after any remuneration is paid, it is determined by the appropriate taxing authorities that additional withholding taxes are due with respect to such withholding taxes, Payee shall directly pay such taxes or reimburse Withholding Party for any payment of such withholding taxes that Withholding Party makes (and shall provide the Withholding Party with receipts or other evidence of such payment thereof to the appropriate tax authorities).

Section 4.5 Audits. Licensee shall keep and maintain complete and accurate records of the transactions underlying the payments to be made hereunder for at least five (5) years, and shall, promptly upon request, allow Licensor or its designee to inspect, audit and make extracts or copies of such records for the purpose of ascertaining the correctness of such payments. If any examination and audit discloses any deficiency, Licensee shall pay the deficiency plus interest thereon at the short-term Applicable Federal Rate under U.S. Treasury Regulation Section 1.482-2(a), compounded quarterly from the date of the deficiency, to Licensor.

Section 4.6 Currency. All payments contemplated hereby or made by Licensee in connection herewith shall be made in the lawful currency of the United States or as mutually agreed to by the Parties.

## ARTICLE 5 LIMITATION OF LIABILITY; INDEMNIFICATION

Section 5.1 LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT AND SECTION 5.2, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF DATA, OR LOSS OF USE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 5.2 Third Party Infringement Claims. The term “**Infringement Claim**” shall mean and represent any claim that any Licensed Intellectual Property or Intellectual Property Rights infringe any third party’s intellectual property rights, including without limitation any patent, trade secret, copyrights, trademarks or trade names. Licensor shall defend, indemnify and hold harmless Licensee and its officers, directors, shareholders, Affiliates, agents, servants, representatives, and employees from and against all claims, demands, actions, proceedings, liabilities, losses, and damages, and all costs and expenses connected therewith, including reasonable attorneys’ fees, arising out of any actual, threatened or alleged Infringement Claim.

## ARTICLE 6 CONFIDENTIAL INFORMATION

Section 6.1 Definition of Confidential Information. Confidential Information means all non-public, confidential, or proprietary information disclosed before, on or after the Effective Date, by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), including but not limited to information: (i) which is marked with “confidential” or a similar legend, or (ii) which is described orally and designated as confidential, or (iii) which would, under the circumstances, be understood by a reasonable person to be confidential (“**Confidential Information**”). Any unmarked or oral information relating to the operation of Restaurants conveyed during a meeting between employees of the Parties discussing Confidential Information will be Confidential Information by default whether or not declared confidential and whether or not it is subsequently described in writing. Upon subsequent disclosure of previously disclosed Confidential Information to the Receiving Party by the Disclosing Party, the information will remain Confidential Information even if not identified as confidential information at the subsequent disclosure.

Section 6.2 Confidentiality Obligations. The Receiving Party shall retain such Confidential Information in confidence, and shall not disclose it to any Third Party or use it for any purpose other than for purposes of this Agreement without the Disclosing Party’s

prior written consent. Each Party shall use at least the same procedures and degree of care with respect to such Confidential Information which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party will immediately give written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, and the Receiving Party will assist the Disclosing Party in remedying such unauthorized use or disclosure.

Section 6.3 Compelled Disclosure. In the event that the Receiving Party or (to the knowledge of the Receiving Party) any of its representatives is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or other similar processes) to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such request or requirement sufficiently timely to allow the Disclosing Party adequate time to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

Section 6.4 Exceptions. Notwithstanding the foregoing, Confidential Information will not include information to the extent that such information:

- (a) was generally available to the public at the time of its disclosure to the Receiving Party hereunder;
- (b) became generally available to the public after its disclosure other than through an act or omission of the Receiving Party in breach of this Agreement; or
- (c) was subsequently lawfully and independently disclosed to the Receiving Party by a person other than the Disclosing Party without an obligation of confidentiality.

Section 6.5 Contractors. The Disclosing Party must give prior written approval to the form and terms of any contract that involves the use of any Disclosing Party Confidential Information by, or the disclosure of any Disclosing Party Confidential Information to, any Third Party ("**Independent Contractor Agreement**"). To the extent directed by the Disclosing Party, such disclosure will be conditioned upon such Contractor's entering into a nondisclosure agreement ("**Confidential Disclosure Agreement**") provided by the Disclosing Party, which agreement will take precedence over the Independent Contractor Agreement.

Section 6.6 Ownership of Materials. Each Receiving Party agrees that all Confidential Information received is and will remain the property of the Disclosing Party and that such shall not be copied or reproduced without the express permission of the Disclosing Party, except for such copies as may be reasonably necessary in order to accomplish the purpose of this Agreement. Upon written request of the Disclosing Party, the Receiving Party shall immediately discontinue all use of all Confidential Information of the Disclosing Party, and shall, at the Disclosing Party's option, either destroy or return to the Disclosing Party all hard copies in its possession of such Confidential Information and any derivatives thereof (including all hard copies of any translation, modification, compilation, abridgement or other form in which the Confidential Information has been recast, transformed or adapted), and to

delete all online electronic copies thereof; provided, however, that the Receiving Party may retain one (1) archival copy of the Confidential Information, which shall be used only in case of a dispute concerning this Agreement. Notwithstanding the foregoing, neither Party shall be required to destroy or alter any computer-based back-up files generated in the normal course of its business, provided that such files are maintained confidential in accordance with the terms of this Agreement for the full period provided for in Section 7.5 (Confidential Information).

Section 6.7 Equitable Remedies. Since unauthorized use or disclosure of the Disclosing Party's Confidential Information will diminish the value to the Disclosing Party of its proprietary interests in the Confidential Information, if the Receiving Party breaches any of its obligations under this Article 6 (CONFIDENTIAL INFORMATION), the Disclosing Party shall be entitled to equitable relief to protect its interests therein, including, but not limited to, injunctive relief, as well as money damages.

## **ARTICLE 7 TERM AND TERMINATION**

Section 7.1 Term. This Agreement shall enter into effect on the Effective Date and shall remain in full force and effect until terminated upon any terms and under any conditions that are mutually agreed upon in writing by the Parties, or terminated in accordance with Section 7.2 (Termination for Cause).

Section 7.2 Termination for Cause. This Agreement may be terminated by either Party, if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days following receipt of notice of such breach.

Section 7.3 Effect of Termination. Upon any termination of this Agreement, Licensee shall:

- (a) immediately cease to exercise all rights and licenses granted under this Agreement;
- (b) within thirty (30) days of the date of termination, at the option of Licensor, comply with the provisions of Section 6.6 (Ownership of Materials); and
- (c) upon request by Licensor, Licensee shall furnish Licensor with a certificate signed by an executive officer of Licensee verifying that the same has been done.

Section 7.4 Final Payment. Upon any termination, Licensee shall pay royalties to Licensor within thirty (30) days thereafter in accordance with Section 4.1 (Royalty) and Section 4.3 (Invoicing and Payments). In the event Licensee fails to promptly discontinue use of any Intellectual Property Rights as required by Section 7.3 (Effect of Termination), royalties shall continue to accrue in accordance with Section 4.1 (Royalty) until such use is actually discontinued. The continuation of royalties shall not be considered a license or otherwise prejudice or preclude the availability of any other remedies available to Licensor for Licensee's breach of this Agreement.

Section 7.5 Confidential Information. With respect to each item of Confidential Information transferred under this Agreement, the provisions of Article 6 (CONFIDENTIAL INFORMATION) shall remain in effect until such time as the Receiving Party can demonstrate, using only legally admissible evidence, that such information is publicly known or was made generally available through no action or inaction of the Receiving Party.

Section 7.6 Survival. The terms and conditions of the following provisions shall survive termination or expiration of this Agreement: Article 1 (DEFINITIONS), Article 4 (ROYALTIES AND OTHER OBLIGATIONS), Article 5 (LIMITATION OF LIABILITY; INDEMNIFICATION), Article 6 (CONFIDENTIAL INFORMATION), and Article 8 (GENERAL PROVISIONS), and Section 3.1 (Retention of Legal Ownership), Section 3.2 (Reservation of Rights), Section 3.3 (Patent and Trademark Prosecution and Maintenance), Section 7.3 (Effect of Termination), Section 7.4 (Final Payment), Section 7.5 (Confidential Information) and Section 7.6 (Survival). In addition, the termination or expiration of this Agreement shall not relieve either Party of any liability under this Agreement that accrued prior to such termination or expiration.

## **ARTICLE 8 GENERAL PROVISIONS**

Section 8.1 Amendments. This Agreement may be amended or supplemented by additional written agreements, sections or certificates, as may be mutually determined in writing by the Parties from time to time to be necessary, appropriate or desirable to further the purpose hereof, to clarify the intention of the Parties, or to add to or modify the covenants, terms or conditions hereof or thereof.

Section 8.2 Assignment. Licensee may not assign the rights or delegate the performance of its obligations under this Agreement without the prior written consent of Licensor.

Section 8.3 Attorney's Fees. The prevailing Party shall be entitled to recover from the losing Party the prevailing Party's attorneys' fees and costs incurred in any lawsuit or other action with respect to any claim arising from the facts or obligations set forth in this Agreement.

Section 8.4 Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall on a Saturday, Sunday or any public or legal holiday, whether local or national, the person having such privilege or duty shall have until midnight local time on the next succeeding business day to exercise such privilege, or to discharge such duty.

Section 8.5 Counterparts. This Agreement may be signed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed shall be an original, but all counterparts shall together constitute one and the same document.

Section 8.6 Disclosure in Compliance with Applicable Laws. Notwithstanding any other statement in this Agreement, Licensor may disclose this Agreement and/or its terms and conditions to the extent that such disclosure is necessary to comply with federal and state securities and other applicable laws. Further, in the exercise of their respective rights and the performance of their respective obligations under this Agreement, each Party shall comply with all applicable laws, regulations and orders of governments having jurisdiction over the Parties including, but not limited to, the U.S. Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 et seq. Without limiting the generality of this Section 8.6, each Party shall obtain and shall maintain in full force and effect throughout the continuance of this Agreement all licenses, permits, authorizations, approvals, government filings, and registrations necessary or appropriate for the exercise of its rights and the performance of its obligations hereunder and shall provide copies of all such documents to the other Party at its request.

Section 8.7 Entire Agreement. This Agreement (including its Exhibits and any amendments) and the other documents referred to herein, contain the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all previous communications, representations, understandings and agreements (including that certain License Agreement between the Parties dated March 14, 2018), either oral or written, between the Parties with respect to the subject matter hereof.

Section 8.8 Governing Law and Jurisdiction. Any questions, claims, disputes or litigation concerning or arising from this Agreement shall be governed by the laws of the state of California, United States of America, without giving effect to the conflicts of laws principles of that state or doctrines of any other state of the United States, or any nation state. Each of the Parties agree to submit to the exclusive jurisdiction of the courts in the state of California and the United States Federal courts located there for any matter arising out of or relating to this Agreement. Notwithstanding the foregoing, in actions seeking to enforce any order or any judgment of any such courts located in the state of California, personal jurisdiction shall be nonexclusive.

Section 8.9 Headings; Construction. The headings in this Agreement are for convenience only and will not be construed to affect the meaning of any provision of this Agreement. Any use of “including” shall also be deemed to mean “including without limitation.”

Section 8.10 Litigation. A Party may not bring a lawsuit or other action upon a cause of action under this Agreement more than one (1) year after the occurrence of the event giving rise to the cause of action.

Section 8.11 Mutual Drafting. This Agreement is the joint product of the Parties hereto and their respective counsel, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of such Parties and counsel, and shall not be construed for or against either Party hereto on the basis of authorship thereof.

Section 8.12 Notices. Any notice required or permitted to be given to, or served upon a Party hereto pursuant to this Agreement shall be sufficiently given or served if sent to such Party by registered air mail, addressed to it as set forth above or to such other address as designated by written notice to the Party serving the notice.



Section 8.13 Relationship between Parties. The Parties shall at all times and for all purposes be deemed to be independent contractors and neither Party, nor either Party's employees, representatives, subcontractors or agents, shall have the right or power to bind the other Party. This Agreement shall not itself create or be deemed to create a joint venture, partnership or similar association between the Parties or either Party's employees, subcontractors or agents.

Section 8.14 Remedies Cumulative. A Party's remedies under this Agreement are cumulative and shall not exclude any other remedy to which the Party may be entitled. Termination of this Agreement by a Party shall not adversely affect or impair such Party's right to pursue any other remedy including, without limitation, the right to recover damages for all harm suffered as a result of the other Party's breach or default.

Section 8.15 Severability. If any provision in this Agreement shall be found or be held to be invalid or unenforceable, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement which shall remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties shall use good faith efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement that most nearly affects the Parties' intent in entering into this Agreement.

Section 8.16 Sufficiency of Consideration. The Parties jointly and severally represent, warrant and covenant that each has received full and sufficient consideration for all assignments, licenses and other grants made, and obligations undertaken, in this Agreement.

Section 8.17 Waiver. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action.

Section 8.18 Governing Language. The Parties acknowledge that this Agreement may be translated into the Japanese language. The Parties agree that the English language version of this Agreement shall be the original, governing instrument and understanding of the Parties, and any interpretation or construction of this Agreement shall be based on the English language version of this Agreement.

By their signatures, the authorized representatives of the Parties acknowledge the Parties' acceptance of this Agreement:

**KURA SUSHI, INC.**

By: /s/ Hiroyuki Hisamune

Name: Hiroyuki Hisamune

Title: Managing Director

Date: 8/5/2019

**KURA SUSHI USA, INC.**

By: /s/ Hajime Uba

Name: Hajime Uba

Title: President/CEO

Date: 8/5/2019

**EXHIBIT A**

**LICENSED INTELLECTUAL PROPERTY**

**Trademarks**

<b><u>Mark</u></b>	<b><u>Reg. No.</u></b>	<b><u>Issued</u></b>	<b><u>Goods/Services</u></b>
<b>KURA SUSHI</b>	5,460,596	May 1, 2018	Restaurant services, bar services and food preparation services featuring sushi
<b>KURA REVOLVING SUSHI BAR and Design</b>	5,557,000	September 4, 2018	Restaurant services, bar services and food preparation services featuring sushi

**Patents**

<b><u>Title</u></b>	<b><u>Pat. No.</u></b>	<b><u>Date of Patent</u></b>
<b>FOOD PLATE CARRIER</b>	8,550,229 B2	October 8, 2013
<b>FOOD MANAGEMENT SYSTEM</b>	9,193,535 B2	November 24, 2015

**Trade Secrets**

N/A

**Works**

Mutenmaru and Other Characters

**Documentation**

N/A

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**EXHIBIT B**

**LICENSED SERVICES**

Restaurant services, bar services and food preparation services featuring sushi and other Japanese food and beverages in connection with the operation of Kura Revolving Sushi Bar restaurants in the United States.

## EMPLOYMENT AGREEMENT

This Employment Agreement (the “**Agreement**”) is made and entered into as of August 5, 2019, by and between Hajime Uba (the “**Executive**”) and Kura Sushi USA, Inc., a Delaware corporation (the “**Company**”).

WHEREAS, the Executive currently serves as Chairman of the Board, President and Chief Executive Officer of the Company;

WHEREAS, the Company has filed a Form S-1 Registration Statement under the Securities Act of 1933 with the Securities and Exchange Commission and anticipates effecting an initial public offering of the shares of its Class A common stock (“**IPO**”); and

WHEREAS, the Company and the Executive wish to continue the Executive’s existing employment relationship on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. The Executive’s employment hereunder shall be effective as of the date the IPO is effective (the “**Effective Date**”) and shall continue until the third anniversary thereof, unless terminated earlier pursuant to Section 5 of this Agreement; provided that, on such third anniversary of the Effective Date and each annual anniversary thereafter (such date and each annual anniversary thereof, a “**Renewal Date**”), the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of one year, unless either party provides written notice of its intention not to extend the term of the Agreement at least 120 days’ prior to the applicable Renewal Date. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the “**Employment Term**.”

2. Position and Duties.

2.1 Position. During the Employment Term, the Executive shall serve as the Chairman of the Board, President and Chief Executive Officer of the Company, reporting to the board of directors of the Company (the “**Board**”). In such position, the Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the Board, which duties, authority, and responsibilities are consistent with the Executive’s position. The Executive shall also serve as a member of the Board for no additional compensation.

2.2 Duties. During the Employment Term, the Executive shall devote substantially all of his business time and attention to the performance of the Executive’s duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board. Notwithstanding the foregoing, the Executive will be permitted to (a) with the prior written consent of the Board act or serve as a director, trustee, committee member, or principal of any type of business, civic, or

charitable organization, and (b) purchase or own less than five percent (5%) of the publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation; provided further that, the activities described in clauses (a) and (b) do not interfere with the performance of the Executive's duties and responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2 hereof.

3. Place of Performance. The principal place of Executive's employment shall be the Company's principal executive office currently located at 17932 Sky Park Circle, Suite H, Irvine, California; provided that, the Executive may be required to travel on Company business during the Employment Term.

4. Compensation.

4.1 Base Salary. The Company shall pay the Executive an annual rate of base salary of \$340,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws. The Executive's base salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the base salary during the Employment Term. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**."

4.2 Annual Bonus.

(a) For each fiscal year of the Employment Term, the Executive shall be eligible to participate in the Company's annual short-term incentive plan (the "**Annual Bonus**"). However, the decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Board (the "**Compensation Committee**").

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable fiscal year.

(c) Except as otherwise provided in Section 5, (i) the Annual Bonus will be subject to the terms of the Company annual bonus plan under which it is granted and (ii) in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Long-Term Incentive Compensation. During the Employment Term, Executive shall be eligible to participate in the 2018 Incentive Compensation Plan established by the Company ("**Equity Incentive Plan**"). The terms of such incentive stock options shall be as set forth in the applicable Equity Incentive Plan and applicable award agreements, which shall control in the event of a conflict with this Agreement.

4.4 Company Car. During the Employment Term, the Executive shall be entitled to have full time use of a Company provided vehicle and Company coverage of insurance, maintenance and gas expenses related to the use of such vehicle.

4.5 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, “**Employee Benefit Plans**”), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time-Off. During the Employment Term, the Executive shall be entitled to paid vacation in accordance with the Company’s vacation policies, as in effect from time to time. The Executive shall receive other paid time-off in accordance with applicable law and the Company’s policies for executive officers as such policies may exist from time to time.

4.7 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive’s duties hereunder in accordance with the Company’s expense reimbursement policies and procedures.

4.8 Indemnification.

(a) In the event that the Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a “**Proceeding**”), other than any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive’s employment hereunder, by reason of the fact that the Executive is or was a director or officer of the Company, or any affiliate of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, the Executive shall be indemnified and held harmless by the Company to the maximum extent permitted under applicable law and the Company’s bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys’ fees), and in accordance with Executive’s Indemnification Agreement.

(b) During the Employment Term and for a period of six (6) years thereafter, the Company or any successor to the Company shall purchase and maintain, at its own expense, directors’ and officers’ liability insurance providing coverage to the Executive on terms that are no less favorable than the coverage provided to other directors and similarly situated executives of the Company.

4.9 Clawback Provisions. Notwithstanding any other provision in this Agreement to the contrary, any Annual Bonus, Equity Incentive Plan compensation, or any other compensation, paid to the Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Expiration of the Term, For Cause or Without Good Reason.

(a) If the Executive's employment is terminated upon the Executive's failure to renew the Agreement in accordance with Section 1, by the Company for Cause or by Executive without Good Reason, the Executive shall be entitled to receive:

- (i) any accrued but unpaid Base Salary and accrued but unused vacation which shall be paid on the Termination Date (as defined below) in accordance with the Company's customary payroll procedures;
- (ii) any earned but unpaid Annual Bonus in accordance with Section 4.2 herein;
- (iii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy and Section 4.8 herein; and
- (iv) such employee benefits, including such equity awards granted under the Equity Incentive Plan, if any, to which the Executive may be entitled as of the Termination Date; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iv) are referred to herein collectively as the "**Accrued Amounts.**"

(b) For purposes of this Agreement, "**Cause**" shall mean:

- (i) the Executive's willful failure to perform his duties (other than any such failure resulting from incapacity due to physical or mental illness);
- (ii) the Executive's willful failure to comply with any valid and legal directive of the Board;
- (iii) the Executive's willful engagement in dishonesty, illegal conduct, or misconduct, which is, in each case, injurious to the Company or its affiliates;



(iv) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;

(v) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude;

(vi) the Executive's violation of a material policy of the Company;

(vii) the Executive's willful unauthorized disclosure of Confidential Information (as defined below);

(viii) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company; or

(ix) any material failure by the Executive to comply with the Company's written policies or rules, as they may be in effect from time to time during the Employment Term.

For purposes of this provision, no act or failure to act on the part of the Executive shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive's written consent:

(i) a material reduction in the Executive's Base Salary other than a general reduction in Base Salary that affects all similarly situated executives in substantially the same proportions;

(ii) any material breach by the Company of any material provision of this Agreement;

(iii) a material, adverse change in the Executive's authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law) taking into account the Company's size, status as a public company, and capitalization as of the date of this Agreement;

- (iv) a material adverse change in the reporting structure applicable to the Executive; or
- (v) the Company's principal executive office set forth in Section 3 of this Agreement is moved by 50 miles or more.

The Executive cannot terminate his employment for Good Reason unless he has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 30 days of the initial existence of such grounds and the Company has had at least 30 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate his employment for Good Reason within 30 days after the expiration of the Company's cure period, then the Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

5.2 Non-Renewal by the Company, Without Cause or for Good Reason. If the Executive's employment is terminated by the Executive for Good Reason or by the Company without Cause or on account of the Company's failure to renew the Agreement in accordance with Section 1, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6, Section 7, Section 8, and Section 9 of this Agreement and his execution of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company (the "**Release**") and such Release becoming effective within 60 days following the Termination Date (such 60-day period, the "**Release Execution Period**"), the Executive shall be entitled to receive the following:

- (a) a lump sum payment equal to the Executive's Base Salary for the year in which the Termination Date occurs;
- (b) reimbursement for the payments Executive makes for COBRA coverage for a period of twelve (12) months, or until Executive has secured other employment, whichever occurs first, provided Executive timely elects and pays for COBRA coverage. COBRA reimbursements shall be made by the Company to Executive consistent with the Company's normal expense reimbursement policy, provided that Executive submits documentation to the Company substantiating his payments for COBRA coverage; and
- (c) The treatment of any outstanding stock options shall be determined in accordance with the terms of the Equity Incentive Plan; provided, however, that in the event of a termination pursuant to Section 5.2 of this Agreement, the vesting of any portion of the Option (as defined in the Equity Incentive Plan) scheduled to vest between the Termination Date and August 31 of that same fiscal year shall be accelerated and treated as being vested as of the Termination Date.

5.3 Death or Disability.

- (a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the Accrued Amounts. Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean the Executive's inability, due to physical or mental incapacity, to perform the essential functions of his job, with or without reasonable accommodation, for one hundred eighty (180) days out of any three hundred sixty-five (365) day period or one hundred twenty (120) consecutive days. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. If the Executive and the Company cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third who shall make such determination in writing. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of the Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 24. The Notice of Termination shall specify:

(a) The termination provision of this Agreement relied upon;

(b) To the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and

(c) The applicable Termination Date.

5.5 Termination Date. The Executive's "**Termination Date**" shall be:

(a) If the Executive's employment hereunder terminates on account of the Executive's death, the date of the Executive's death;

(b) If the Executive's employment hereunder is terminated on account of the Executive's Disability, the date that it is determined that the Executive has a Disability;

(c) If the Company terminates the Executive's employment hereunder for Cause, the date the Notice of Termination is delivered to the Executive;

(d) If the Company terminates the Executive's employment hereunder without Cause, the date specified in the Notice of Termination;

(e) If the Executive terminates his employment hereunder with or without Good Reason, the date specified in the Executive's Notice of Termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered; provided that, the Company may waive all or any part of the 30 day notice period for no consideration by giving written notice to the Executive and for all purposes of this Agreement, the Executive's Termination Date shall be the date determined by the Company; and

(f) If the Executive's employment hereunder terminates because either party provides notice of non-renewal pursuant to Section 1, the Renewal Date immediately following the date on which the applicable party delivers notice of non-renewal.

Notwithstanding anything contained herein, the Termination Date shall not occur until the date on which the Executive incurs a "separation from service" within the meaning of Code Section 409A.

5.6 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

5.7 Section 280G.

(a) If any of the payments or benefits received or to be received by the Executive (including, without limitation, any payment or benefits received in connection with the Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "**280G Payments**") constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code (the "**Code**") and will be subject to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), then prior to making 280G Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) payment made to the Executive of the 280G Payments after payment of the Excise Tax to (ii) the Net Benefit to the Executive if the 280G Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the 280G Payments be reduced to the minimum extent necessary to ensure that no portion of the 280G Payments are subject to the Excise Tax. "**Net Benefit**" shall mean the present value of the 280G Payments net of all federal, state, local, foreign income, employment, and excise taxes. Any reduction made pursuant to this Section 5.7(a) shall be made in a manner determined by the Company that is consistent with the requirements of Code Section 409A.

(b) All calculations and determinations under this Section 5.7 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "**Tax Counsel**") whose determinations shall be conclusive and binding on the Company and the Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.7, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and the Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.7. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

6. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

7. Confidential Information. The Executive understands and acknowledges that during the Employment Term, he will have access to and learn about Confidential Information, as defined below.

7.1 Confidential Information Defined.

(a) Definition.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Company or any of its affiliates or businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence.

The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to the Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Executive; provided that, such disclosure is through no direct or indirect fault of the Executive or person(s) acting on the Executive's behalf.

(b) Company Creation and Use of Confidential Information.

The Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the Company's revolving sushi restaurants. The Executive understands and acknowledges that as a result of these efforts, the Company has created, and continues to use and create Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(c) Disclosure and Use Restrictions.

The Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) to not use Confidential Information except for the benefit of the Company; (iii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 (“DTSA”). Notwithstanding any other provision of this Agreement:

(i) The Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s trade secrets to the Executive’s attorney and use the trade secret information in the court proceeding if the Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

The Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Executive first having access to such Confidential Information and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of the Executive’s breach of this Agreement or breach by those acting in concert with the Executive or on the Executive’s behalf.

(e) Former Employer Information. Executive agrees that during his employment with the Company he will not improperly use, disclose, or induce the Company to use, any proprietary information or trade secrets of any former or concurrent employer or other person or entity. Executive further agrees that he will not bring onto the premises of the Company or transfer onto the Company’s technology systems any unpublished document, proprietary information or trade secrets belonging to any such employer, person or entity unless consented to in writing by both the Company and such employer, person or entity.

(f) Third Party Information. Executive recognizes that the Company may have received and in the future may receive from third parties associated with the Company, e.g., the Company’s customers, suppliers, licensors, licensees, partners, or collaborators (“**Associated Third Parties**”) their confidential or proprietary information (“**Associated Third Party Confidential Information**”). By way of example, Associated Third Party Confidential Information may include the habits or practices, technology or requirements of Associated Third

Parties, and/or information related to the business conducted between the Company and such Associated Third Parties. Executive agrees at all times during his employment with the Company and thereafter to hold any Associated Third Party Confidential Information in the strictest confidence, and not to use or to disclose it to any person, firm or corporation, except as necessary in carrying out his work for the Company consistent with the Company's agreement with such Associated Third Parties. Executive understands that unauthorized use or disclosure of Associated Third Party Confidential Information during his employment will lead to disciplinary action, up to and including immediate termination of his employment and legal action by the Company.

8. Non-Disparagement. The Executive agrees and covenants that he will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company or its businesses, or any of its employees, directors, officers, customers, suppliers, investors and other associated third parties.

This Section 8 does not, in any way, restrict or impede the Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

9. Solicitation of Employees. Executive agrees that for a period of twelve (12) months immediately following the termination of his relationship with the Company for any reason, whether voluntary or involuntary, with or without cause, Executive shall not either directly or indirectly solicit any of the Company's employees to leave their employment, or attempt to solicit employees of the Company, either for Executive or for any other person or entity.

10. Remedies. In the event of a breach or threatened breach by the Executive of Section 7, Section 8, or Section 9 of this Agreement, the Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

11. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement or any breach of this Agreement shall be submitted to and decided by binding arbitration conducted before a single arbitrator in Irvine, California. Arbitration shall be administered exclusively by JAMS pursuant to its Employment Arbitration Rules & Procedures, which can be found at <http://www.jamsadr.com/rules-employment-arbitration/> and shall be conducted consistent with the rules, regulations, and requirements thereof as well as any requirements imposed by state law. Any arbitral award determination shall be final and binding upon the parties.



12. Proprietary Rights.

12.1 Inventions Retained and Licensed. Executive has attached as Exhibit A a list describing all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets that (i) Executive conceived in whole or in part before commencing employment with the Company, and (ii) do not relate to the Company's current or proposed business, products, or research and development ("**Prior Inventions**"). If no such list is attached, Executive represents and warrants that no such Prior Inventions exist. Executive further represents and warrants that the inclusion of any Prior Inventions on Exhibit A to this Agreement will not materially affect Executive's ability to perform all obligations under this Agreement. If, in the course of his employment with the Company, Executive incorporates into or use any fully developed Prior Invention in connection with any product, process, service, technology or other work by or on behalf of Company, Executive hereby grants to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license, with the right to grant and authorize sublicenses, to make, have made, modify, use, import, offer for sale, and sell such Prior Invention as part of or in connection with such product, process, service, technology or other work and to practice any method related thereto.

12.2 Assignment of Inventions. "**Inventions**" means all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets, whether or not patentable or registrable under patent, copyright or similar laws, that Executive may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, (i) during the period of time that the Company employs Executive (including during off-duty hours), or (ii) in connection with the use of the Company's equipment, supplies, facilities, personnel, or Company Confidential Information, except as provided in Section 12.5 below. Executive will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby now assigns to the Company or to its designee(s) all of Executive's right, title, and interest in and to any and all Inventions. Executive further acknowledges that all original works of authorship that Executive may make (solely or jointly with others) within the scope of and during the period of his employment with the Company and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Executive understands and agrees that any decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit and that no royalty or other consideration will be due to him as a result of the Company's efforts to commercialize or market any such Inventions.

12.3 Maintenance of Records. Executive agrees to keep and maintain adequate, current, accurate, and authentic written records of all Inventions that Executive creates (solely or jointly with others) during the term of his employment with the Company. The records will be in the form of notes, sketches, drawings, electronic files, reports, or any other format that may be specified by the Company. The records are and will be available to, and remain the sole property of, the Company at all times.

12.4 Patent and Copyright Registrations. Executive agrees to assist the Company or its designee(s), at the Company's reasonable expense, in every proper way to secure the Company's rights in any Inventions and in any rights relating to such Inventions in any and all countries. Such assistance regarding any Inventions and/or related rights includes, without limitation, full disclosure to the Company of all pertinent information and data; the execution of all applications, specifications, oaths, assignments and all other instruments that the Company might deem proper or reasonably necessary to apply for, register, obtain, maintain, defend, and enforce such rights, and/or to assign and convey to the Company, its successors, assigns, and/or nominees the sole and exclusive rights, title and interest in and to such Inventions and any rights relating to them; and testifying in a lawsuit or other proceeding relating to such Inventions and any rights relating to them. Executive expressly agrees that his obligation to execute or cause to be executed, when it is in his power to do so, any such instrument or papers continues after the termination of this Agreement, at the Company's reasonable expense. If the Company is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature with respect to any Inventions including, without limitation, to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering such Inventions, then Executive hereby irrevocably designates and appoints the Company and/or its duly authorized officers and agents as his agent and attorney-in-fact, to act for and on his behalf and stead to execute and file any papers, oaths and to do all other lawfully permitted acts with respect to such Inventions with the same legal force and effect as if Executive executed them.

12.5 Exception to Assignments. Executive understands that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (the full text of which is in the attached Exhibit B). Executive will advise the Company immediately in writing of any inventions that (i) Executive might create (solely or jointly with others) after today, (ii) Executive believes meet the criteria in California Labor Code Section 2870, and (iii) are not otherwise disclosed on Exhibit A.

### 13. Security.

13.1 Security and Access. The Executive acknowledges that he has no reasonable expectation of privacy in any computer, technology system, email, handheld device, telephone, or documents that are used to conduct the business of the Company whether such device is personally owned or provided by the Company. As such, the Company has the right to audit and search all such items and systems, without further notice to Executive, to ensure that the Company is licensed to use the software on the Company's devices in compliance with the Company's software licensing policies, to ensure compliance with the Company's policies, and for any other business-related purposes in the Company's sole discretion. Executive agrees and covenants (a) to comply with all Company security policies and procedures as in force from time to time including without limitation those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, computer systems, email systems, computer networks, document storage systems, software, data security, encryption, firewalls, passwords and any and all other Company facilities, IT resources and communication

technologies (“**Facilities and Information Technology Resources**”); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive’s employment by the Company, whether termination is voluntary or involuntary. The Executive agrees to notify the Company promptly in the event he learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company property or materials by others.

13.2 Exit Obligations. Upon (a) voluntary or involuntary termination of the Executive’s employment or (b) the Company’s request at any time during the Executive’s employment, the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, identification cards, security devices, employer credit cards, network access devices, computers, cell phones, equipment, speakers, webcams, manuals, reports, files, books, compilations, work product, email messages, recordings, tapes, disks, thumb drives or other removable information storage devices, hard drives, and data and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with his employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive’s possession or control, including those stored on any non-Company devices, networks, storage locations, and media in the Executive’s possession or control.

14. Publicity. The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its agents, representatives and licensees, of the Executive’s name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company (“**Permitted Uses**”) without further consent from or royalty, payment, or other compensation to the Executive. The Executive hereby forever waives and releases the Company and its directors, officers, employees, and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company’s and its agents’, representatives’, and licensees’ exercise of their rights in connection with any Permitted Uses.

15. Governing Law, Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of California without regard to conflicts of law principles. Subject to Section 11 of this Agreement, any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of California, County of Orange. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

16. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

17. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by a director of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

18. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

19. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

20. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21. Section 409A.

21.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Payments made under this Agreement with respect to a termination from employment, shall be considered made only upon a "separation from service" as defined in Internal Revenue Code Section 409A ("**Code Section 409A**"). It is further intended that such payments are not deferred compensation subject to Code Section 409A to the extent that such payments are covered by (a) the "short-term deferral exception" set forth in Treas. Reg. Section 1.409A-1(b)(4), (b) the "two times severance exception" set forth in Treas. Reg. Section 1.409A-1(b)(9)(iii), or (c) the "limited payments exception" set forth in Treas. Reg. Section 1.409A-1(b)(9)(v)(D). The short-term deferral exception, the two times severance exception and the limited payments exception shall be applied to the payments hereunder, as applicable, in order of payment in such a manner as results in the maximum exclusion of such payments from treatment as deferred compensation under Code Section 409A. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

21.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on the Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Executive's separation from service occurs shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

21.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;
- (b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and
- (c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

22. Notification to Subsequent Employer. When the Executive's employment with the Company terminates, the Executive agrees to notify any subsequent employer of Executive's continuing obligations under this Agreement. The Executive will also deliver a copy of such notice to the Company before the Executive commences employment with any subsequent employer.

23. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

24. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company at:

Kura Sushi USA, Inc.  
17932 Sky Park Circle, Suite H  
Irvine, CA 92614  
Attention: Board of Directors

with a copy to:

Squire Patton Boggs (US) LLP  
555 S. Flower Street, 31st Floor  
Los Angeles, CA 90071  
Attention: Hiroki Suyama, Esq.

If to the Executive at:

Hajime Uba  
5 Salviati Aisle  
Irvine, CA 92606

25. Representations of the Executive. The Executive represents and warrants to the Company that:

(a) The Executive’s acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound.

(b) The Executive’s acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.

26. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

27. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

28. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

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

KURA SUSHI USA, INC,  
a Delaware corporation

EXECUTIVE

By: /s/ Koji Shinohara

Signature: /s/ Hajime Uba

Name: Koji Shinohara

Print Name: Hajime Uba

Title: CFO

**EXHIBIT A**

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>

No inventions or improvements

Additional sheets attached

Signature: /s/ Hajime Uba

Name: Hajime Uba

Date: August 5, 2019



**EXHIBIT B**

**CALIFORNIA LABOR CODE SECTION 2870  
INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the “**Agreement**”) is made and entered into as of August 5, 2019, by and between Koji Shinohara (the “**Executive**”) and Kura Sushi USA, Inc., a Delaware corporation (the “**Company**”).

WHEREAS, the Executive currently serves as Chief Financial Officer, Treasurer and Secretary of the Company;

WHEREAS, the Company has filed a Form S-1 Registration Statement under the Securities Act of 1993 with the Securities and Exchange Commission and anticipates effecting an initial public offering of the shares of its Class A common stock (“**IPO**”); and

WHEREAS, the Company and the Executive wish to continue the Executive’s existing employment relationship on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. **Term.** The Executive’s employment hereunder shall be effective as of the date the IPO is effective (the “**Effective Date**”) and shall continue until the third anniversary thereof, unless terminated earlier pursuant to Section 5 of this Agreement; provided that, on such third anniversary of the Effective Date and each annual anniversary thereafter (such date and each annual anniversary thereof, a “**Renewal Date**”), the Agreement shall be deemed to be automatically extended, upon the same terms and conditions, for successive periods of one year, unless either party provides written notice of its intention not to extend the term of the Agreement at least 120 days’ prior to the applicable Renewal Date. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the “**Employment Term**.”

2. **Position and Duties.**

2.1 **Position.** During the Employment Term, the Executive shall serve as the Chief Financial Officer, Treasurer, Secretary and Chief Compliance Officer of the Company, reporting to the President of the Company. In such position, the Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the President and the board of directors of the Company (the “**Board**”), which duties, authority, and responsibilities are consistent with the Executive’s position, including . If requested, the Executive shall also serve as a member of the Board for no additional compensation.

2.2 **Duties.** During the Employment Term, the Executive shall devote substantially all of his business time and attention to the performance of the Executive’s duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board. Notwithstanding the foregoing, the Executive will be permitted to (a) with the prior written consent of the Board act

or serve as a director, trustee, committee member, or principal of any type of business, civic, or charitable organization, and (b) purchase or own less than five percent (5%) of the publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation; provided further that, the activities described in clauses (a) and (b) do not interfere with the performance of the Executive's duties and responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2 hereof.

3. Place of Performance. The principal place of Executive's employment shall be the Company's principal executive office currently located at 17932 Sky Park Circle, Suite H, Irvine, California; provided that, the Executive may be required to travel on Company business during the Employment Term.

4. Compensation.

4.1 Base Salary. The Company shall pay the Executive an annual rate of base salary of \$240,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws. The Executive's base salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the base salary during the Employment Term. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**."

4.2 Annual Bonus.

(a) For each fiscal year of the Employment Term, the Executive shall be eligible to participate in the Company's annual short-term incentive plan (the "**Annual Bonus**"). However, the decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Board (the "**Compensation Committee**").

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable fiscal year.

(c) Except as otherwise provided in Section 5, (i) the Annual Bonus will be subject to the terms of the Company annual bonus plan under which it is granted and (ii) in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Long-Term Incentive Compensation. During the Employment Term, Executive shall be eligible to participate in the 2018 Incentive Compensation Plan established by the Company ("**Equity Incentive Plan**"). The terms of such incentive stock options shall be as set forth in the applicable Equity Incentive Plan and applicable award agreements, which shall control in the event of a conflict with this Agreement.

4.4 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, “**Employee Benefit Plans**”), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.5 Vacation; Paid Time-Off. During the Employment Term, the Executive shall be entitled to paid vacation in accordance with the Company’s vacation policies, as in effect from time to time. The Executive shall receive other paid time-off in accordance with applicable law and the Company’s policies for executive officers as such policies may exist from time to time.

4.6 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive’s duties hereunder in accordance with the Company’s expense reimbursement policies and procedures.

4.7 Indemnification.

(a) In the event that the Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a “**Proceeding**”), other than any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive’s employment hereunder, by reason of the fact that the Executive is or was a director or officer of the Company, or any affiliate of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, the Executive shall be indemnified and held harmless by the Company to the maximum extent permitted under applicable law and the Company’s bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys’ fees), and in accordance with Executive’s Indemnification Agreement.

(b) During the Employment Term and for a period of six (6) years thereafter, the Company or any successor to the Company shall purchase and maintain, at its own expense, directors’ and officers’ liability insurance providing coverage to the Executive on terms that are no less favorable than the coverage provided to other directors and similarly situated executives of the Company.

4.8 Clawback Provisions. Notwithstanding any other provision in this Agreement to the contrary, any Annual Bonus, Equity Incentive Plan compensation, or any other compensation, paid to the Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. Termination of Employment. The Employment Term and the Executive's employment hereunder may be terminated by either the Company or the Executive at any time and for any reason. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to the compensation and benefits described in this Section 5 and shall have no further rights to any compensation or any other benefits from the Company or any of its affiliates.

5.1 Expiration of the Term, For Cause or Without Good Reason.

(a) If the Executive's employment is terminated upon the Executive's failure to renew the Agreement in accordance with Section 1, by the Company for Cause or by Executive without Good Reason, the Executive shall be entitled to receive:

- (i) any accrued but unpaid Base Salary and accrued but unused vacation which shall be paid on the Termination Date (as defined below) in accordance with the Company's customary payroll procedures;
- (ii) any earned but unpaid Annual Bonus in accordance with Section 4.2 herein;
- (iii) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy and Section 4.8 herein; and
- (iv) such employee benefits, including such equity awards granted under the Equity Incentive Plan, if any, to which the Executive may be entitled as of the Termination Date; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iv) are referred to herein collectively as the "**Accrued Amounts.**"

(b) For purposes of this Agreement, "**Cause**" shall mean:

- (i) the Executive's willful failure to perform his duties (other than any such failure resulting from incapacity due to physical or mental illness);
- (ii) the Executive's willful failure to comply with any valid and legal directive of the Board;
- (iii) the Executive's willful engagement in dishonesty, illegal conduct, or misconduct, which is, in each case, injurious to the Company or its affiliates;

(iv) the Executive's embezzlement, misappropriation, or fraud, whether or not related to the Executive's employment with the Company;

(v) the Executive's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony (or state law equivalent) or a crime that constitutes a misdemeanor involving moral turpitude;

(vi) the Executive's violation of a material policy of the Company;

(vii) the Executive's willful unauthorized disclosure of Confidential Information (as defined below);

(viii) the Executive's material breach of any material obligation under this Agreement or any other written agreement between the Executive and the Company; or

(ix) any material failure by the Executive to comply with the Company's written policies or rules, as they may be in effect from time to time during the Employment Term.

For purposes of this provision, no act or failure to act on the part of the Executive shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without the Executive's written consent:

(i) a material reduction in the Executive's Base Salary other than a general reduction in Base Salary that affects all similarly situated executives in substantially the same proportions;

(ii) any material breach by the Company of any material provision of this Agreement;

(iii) a material, adverse change in the Executive's authority, duties, or responsibilities (other than temporarily while the Executive is physically or mentally incapacitated or as required by applicable law) taking into account the Company's size, status as a public company, and capitalization as of the date of this Agreement;

- (iv) a material adverse change in the reporting structure applicable to the Executive; or
- (v) the Company's principal executive office set forth in Section 3 of this Agreement is moved by 50 miles or more.

The Executive cannot terminate his employment for Good Reason unless he has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 30 days of the initial existence of such grounds and the Company has had at least 30 days from the date on which such notice is provided to cure such circumstances. If the Executive does not terminate his employment for Good Reason within 30 days after the expiration of the Company's cure period, then the Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

5.2 Non-Renewal by the Company, Without Cause or for Good Reason. If the Executive's employment is terminated by the Executive for Good Reason or by the Company without Cause or on account of the Company's failure to renew the Agreement in accordance with Section 1, the Executive shall be entitled to receive the Accrued Amounts and subject to the Executive's compliance with Section 6, Section 7, Section 8, and Section 9 of this Agreement and his execution of a release of claims in favor of the Company, its affiliates and their respective officers and directors in a form provided by the Company (the "**Release**") and such Release becoming effective within 60 days following the Termination Date (such 60-day period, the "**Release Execution Period**"), the Executive shall be entitled to receive the following:

- (a) a lump sum payment equal to the Executive's Base Salary for the year in which the Termination Date occurs;
- (b) reimbursement for the payments Executive makes for COBRA coverage for a period of twelve (12) months, or until Executive has secured other employment, whichever occurs first, provided Executive timely elects and pays for COBRA coverage. COBRA reimbursements shall be made by the Company to Executive consistent with the Company's normal expense reimbursement policy, provided that Executive submits documentation to the Company substantiating his payments for COBRA coverage; and
- (c) The treatment of any outstanding stock options shall be determined in accordance with the terms of the Equity Incentive Plan; provided, however, that in the event of a termination pursuant to Section 5.2 of this Agreement, the vesting of any portion of the Option (as defined in the Equity Incentive Plan) scheduled to vest between the Termination Date and August 31 of that same fiscal year shall be accelerated and treated as being vested as of the Termination Date.

5.3 Death or Disability.

- (a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term, and the Company may terminate the Executive's employment on account of the Executive's Disability.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death or Disability, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the Accrued Amounts. Notwithstanding any other provision contained herein, all payments made in connection with the Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean the Executive's inability, due to physical or mental incapacity, to perform the essential functions of his job, with or without reasonable accommodation, for one hundred eighty (180) days out of any three hundred sixty-five (365) day period or one hundred twenty (120) consecutive days. Any question as to the existence of the Executive's Disability as to which the Executive and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Executive and the Company. If the Executive and the Company cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third who shall make such determination in writing. The determination of Disability made in writing to the Company and the Executive shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of the Executive's employment hereunder by the Company or by the Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of the Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 24. The Notice of Termination shall specify:

(a) The termination provision of this Agreement relied upon;

(b) To the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated; and

(c) The applicable Termination Date.

5.5 Termination Date. The Executive's "**Termination Date**" shall be:

(a) If the Executive's employment hereunder terminates on account of the Executive's death, the date of the Executive's death;

(b) If the Executive's employment hereunder is terminated on account of the Executive's Disability, the date that it is determined that the Executive has a Disability;

(c) If the Company terminates the Executive's employment hereunder for Cause, the date the Notice of Termination is delivered to the Executive;

(d) If the Company terminates the Executive's employment hereunder without Cause, the date specified in the Notice of Termination;



(e) If the Executive terminates his employment hereunder with or without Good Reason, the date specified in the Executive's Notice of Termination, which shall be no less than 30 days following the date on which the Notice of Termination is delivered; provided that, the Company may waive all or any part of the 30 day notice period for no consideration by giving written notice to the Executive and for all purposes of this Agreement, the Executive's Termination Date shall be the date determined by the Company; and

(f) I

f the Executive's employment hereunder terminates because either party provides notice of non-renewal pursuant to Section 1, the Renewal Date immediately following the date on which the applicable party delivers notice of non-renewal.

Notwithstanding anything contained herein, the Termination Date shall not occur until the date on which the Executive incurs a "separation from service" within the meaning of Code Section 409A.

5.6 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer, or if applicable, as a member of the Board (or a committee thereof) of the Company or any of its affiliates.

5.7 Section 280G.

(a) If any of the payments or benefits received or to be received by the Executive (including, without limitation, any payment or benefits received in connection with the Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "**280G Payments**") constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code (the "**Code**") and will be subject to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), then prior to making 280G Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) payment made to the Executive of the 280G Payments after payment of the Excise Tax to (ii) the Net Benefit to the Executive if the 280G Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the 280G Payments be reduced to the minimum extent necessary to ensure that no portion of the 280G Payments are subject to the Excise Tax. "**Net Benefit**" shall mean the present value of the 280G Payments net of all federal, state, local, foreign income, employment, and excise taxes. Any reduction made pursuant to this Section 5.7(a) shall be made in a manner determined by the Company that is consistent with the requirements of Code Section 409A.

(b) All calculations and determinations under this Section 5.7 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "**Tax Counsel**") whose determinations shall be conclusive and binding on the Company and the Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.7, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and the Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.7. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

6. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities. The Company shall reimburse the Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that the Executive is required to spend substantial time on such matters, the Company shall compensate the Executive at an hourly rate based on the Executive's Base Salary on the Termination Date.

7. Confidential Information. The Executive understands and acknowledges that during the Employment Term, he will have access to and learn about Confidential Information, as defined below.

7.1 Confidential Information Defined.

(a) Definition.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Company or any of its affiliates or businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence.

The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to the Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Executive; provided that, such disclosure is through no direct or indirect fault of the Executive or person(s) acting on the Executive's behalf.

(b) Company Creation and Use of Confidential Information.

The Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the Company's revolving sushi restaurants. The Executive understands and acknowledges that as a result of these efforts, the Company has created, and continues to use and create Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(c) Disclosure and Use Restrictions.

The Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) to not use Confidential Information except for the benefit of the Company; (iii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 (“DTSA”). Notwithstanding any other provision of this Agreement:

(i) The Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company’s trade secrets to the Executive’s attorney and use the trade secret information in the court proceeding if the Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

The Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Executive first having access to such Confidential Information and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of the Executive’s breach of this Agreement or breach by those acting in concert with the Executive or on the Executive’s behalf.

(e) Former Employer Information. Executive agrees that during his employment with the Company he will not improperly use, disclose, or induce the Company to use, any proprietary information or trade secrets of any former or concurrent employer or other person or entity. Executive further agrees that he will not bring onto the premises of the Company or transfer onto the Company’s technology systems any unpublished document, proprietary information or trade secrets belonging to any such employer, person or entity unless consented to in writing by both the Company and such employer, person or entity.

(f) Third Party Information. Executive recognizes that the Company may have received and in the future may receive from third parties associated with the Company, e.g., the Company’s customers, suppliers, licensors, licensees, partners, or collaborators (“**Associated Third Parties**”) their confidential or proprietary information (“**Associated Third Party Confidential Information**”). By way of example, Associated Third Party Confidential Information may include the habits or practices, technology or requirements of Associated Third

Parties, and/or information related to the business conducted between the Company and such Associated Third Parties. Executive agrees at all times during his employment with the Company and thereafter to hold any Associated Third Party Confidential Information in the strictest confidence, and not to use or to disclose it to any person, firm or corporation, except as necessary in carrying out his work for the Company consistent with the Company's agreement with such Associated Third Parties. Executive understands that unauthorized use or disclosure of Associated Third Party Confidential Information during his employment will lead to disciplinary action, up to and including immediate termination of his employment and legal action by the Company.

8. Non-Disparagement. The Executive agrees and covenants that he will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company or its businesses, or any of its employees, directors, officers, customers, suppliers, investors and other associated third parties.

This Section 8 does not, in any way, restrict or impede the Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

9. Solicitation of Employees. Executive agrees that for a period of twelve (12) months immediately following the termination of his relationship with the Company for any reason, whether voluntary or involuntary, with or without cause, Executive shall not either directly or indirectly solicit any of the Company's employees to leave their employment, or attempt to solicit employees of the Company, either for Executive or for any other person or entity.

10. Remedies. In the event of a breach or threatened breach by the Executive of Section 7, Section 8, or Section 9 of this Agreement, the Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

11. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement or any breach of this Agreement shall be submitted to and decided by binding arbitration conducted before a single arbitrator in Irvine, California. Arbitration shall be administered exclusively by JAMS pursuant to its Employment Arbitration Rules & Procedures, which can be found at <http://www.jamsadr.com/rules-employment-arbitration/> and shall be conducted consistent with the rules, regulations, and requirements thereof as well as any requirements imposed by state law. Any arbitral award determination shall be final and binding upon the parties.

12. Proprietary Rights.

12.1 Inventions Retained and Licensed. Executive has attached as Exhibit A a list describing all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets that (i) Executive conceived in whole or in part before commencing employment with the Company, and (ii) do not relate to the Company's current or proposed business, products, or research and development ("**Prior Inventions**"). If no such list is attached, Executive represents and warrants that no such Prior Inventions exist. Executive further represents and warrants that the inclusion of any Prior Inventions on Exhibit A to this Agreement will not materially affect Executive's ability to perform all obligations under this Agreement. If, in the course of his employment with the Company, Executive incorporates into or use any fully developed Prior Invention in connection with any product, process, service, technology or other work by or on behalf of Company, Executive hereby grants to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license, with the right to grant and authorize sublicenses, to make, have made, modify, use, import, offer for sale, and sell such Prior Invention as part of or in connection with such product, process, service, technology or other work and to practice any method related thereto.

12.2 Assignment of Inventions. "**Inventions**" means all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets, whether or not patentable or registrable under patent, copyright or similar laws, that Executive may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, (i) during the period of time that the Company employs Executive (including during off-duty hours), or (ii) in connection with the use of the Company's equipment, supplies, facilities, personnel, or Company Confidential Information, except as provided in Section 12.5 below. Executive will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby now assigns to the Company or to its designee(s) all of Executive's right, title, and interest in and to any and all Inventions. Executive further acknowledges that all original works of authorship that Executive may make (solely or jointly with others) within the scope of and during the period of his employment with the Company and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Executive understands and agrees that any decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit and that no royalty or other consideration will be due to him as a result of the Company's efforts to commercialize or market any such Inventions.

12.3 Maintenance of Records. Executive agrees to keep and maintain adequate, current, accurate, and authentic written records of all Inventions that Executive creates (solely or jointly with others) during the term of his employment with the Company. The records will be in the form of notes, sketches, drawings, electronic files, reports, or any other format that may be specified by the Company. The records are and will be available to, and remain the sole property of, the Company at all times.

12.4 Patent and Copyright Registrations. Executive agrees to assist the Company or its designee(s), at the Company's reasonable expense, in every proper way to secure the Company's rights in any Inventions and in any rights relating to such Inventions in any and all countries. Such assistance regarding any Inventions and/or related rights includes, without limitation, full disclosure to the Company of all pertinent information and data; the execution of all applications, specifications, oaths, assignments and all other instruments that the Company might deem proper or reasonably necessary to apply for, register, obtain, maintain, defend, and enforce such rights, and/or to assign and convey to the Company, its successors, assigns, and/or nominees the sole and exclusive rights, title and interest in and to such Inventions and any rights relating to them; and testifying in a lawsuit or other proceeding relating to such Inventions and any rights relating to them. Executive expressly agrees that his obligation to execute or cause to be executed, when it is in his power to do so, any such instrument or papers continues after the termination of this Agreement, at the Company's reasonable expense. If the Company is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature with respect to any Inventions including, without limitation, to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering such Inventions, then Executive hereby irrevocably designates and appoints the Company and/or its duly authorized officers and agents as his agent and attorney-in-fact, to act for and on his behalf and stead to execute and file any papers, oaths and to do all other lawfully permitted acts with respect to such Inventions with the same legal force and effect as if Executive executed them.

12.5 Exception to Assignments. Executive understands that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (the full text of which is in the attached Exhibit B). Executive will advise the Company immediately in writing of any inventions that (i) Executive might create (solely or jointly with others) after today, (ii) Executive believes meet the criteria in California Labor Code Section 2870, and (iii) are not otherwise disclosed on Exhibit A.

### 13. Security.

13.1 Security and Access. The Executive acknowledges that he has no reasonable expectation of privacy in any computer, technology system, email, handheld device, telephone, or documents that are used to conduct the business of the Company whether such device is personally owned or provided by the Company. As such, the Company has the right to audit and search all such items and systems, without further notice to Executive, to ensure that the Company is licensed to use the software on the Company's devices in compliance with the Company's software licensing policies, to ensure compliance with the Company's policies, and for any other business-related purposes in the Company's sole discretion. Executive agrees and covenants (a) to comply with all Company security policies and procedures as in force from time to time including without limitation those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, computer systems, email systems, computer networks, document storage systems, software, data security, encryption, firewalls, passwords and any and all other Company facilities, IT resources and communication

technologies (“**Facilities and Information Technology Resources**”); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive’s employment by the Company, whether termination is voluntary or involuntary. The Executive agrees to notify the Company promptly in the event he learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company property or materials by others.

13.2 Exit Obligations. Upon (a) voluntary or involuntary termination of the Executive’s employment or (b) the Company’s request at any time during the Executive’s employment, the Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, identification cards, security devices, employer credit cards, network access devices, computers, cell phones, equipment, speakers, webcams, manuals, reports, files, books, compilations, work product, email messages, recordings, tapes, disks, thumb drives or other removable information storage devices, hard drives, and data and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with his employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive’s possession or control, including those stored on any non-Company devices, networks, storage locations, and media in the Executive’s possession or control.

14. Publicity. The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its agents, representatives and licensees, of the Executive’s name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company (“**Permitted Uses**”) without further consent from or royalty, payment, or other compensation to the Executive. The Executive hereby forever waives and releases the Company and its directors, officers, employees, and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company’s and its agents’, representatives’, and licensees’ exercise of their rights in connection with any Permitted Uses.

15. Governing Law, Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of California without regard to conflicts of law principles. Subject to Section 11 of this Agreement, any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of California, County of Orange. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.



16. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

17. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by a director of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

18. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

19. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

20. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21. Section 409A.

21.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Payments made under this Agreement with respect to a termination from employment, shall be considered made only upon a "separation from service" as defined in Internal Revenue Code Section 409A ("**Code Section 409A**"). It is further intended that such payments are not deferred compensation subject to Code Section 409A to the extent that such payments are covered by (a) the "short-term deferral exception" set forth in Treas. Reg. Section 1.409A-1(b)(4), (b) the "two times severance exception" set forth in Treas. Reg. Section 1.409A-1(b)(9)(iii), or (c) the "limited payments exception" set forth in Treas. Reg. Section 1.409A-1(b)(9)(v)(D). The short-term deferral exception, the two times severance exception and the limited payments exception shall be applied to the payments hereunder, as applicable, in order of payment in such a manner as results in the maximum exclusion of such payments from treatment as deferred compensation under Code Section 409A. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

21.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on the Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Executive's separation from service occurs shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

21.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;
- (b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and
- (c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

22. Notification to Subsequent Employer. When the Executive's employment with the Company terminates, the Executive agrees to notify any subsequent employer of Executive's continuing obligations under this Agreement. The Executive will also deliver a copy of such notice to the Company before the Executive commences employment with any subsequent employer.

23. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

24. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company at:

Kura Sushi USA, Inc.  
17932 Sky Park Circle, Suite H  
Irvine, CA 92614  
Attention: President

with a copy to:

Squire Patton Boggs (US) LLP  
555 S. Flower Street, 31st Floor  
Los Angeles, CA 90071  
Attention: Hiroki Suyama, Esq.

If to the Executive at:

Koji Shinohara  
18869 Kithira Cir.  
Huntington Beach, CA 92648

25. Representations of the Executive. The Executive represents and warrants to the Company that:

(a) The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound.

(b) The Executive's acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.

26. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

27. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

28. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

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

KURA SUSHI USA, INC,  
a Delaware corporation

EXECUTIVE

By: /s/ Hajime Uba

Signature: /s/ Koji Shinohara

Name: Hajime Uba

Print Name: Koji Shinohara

Title: President and CEO

**EXHIBIT A**

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>

No inventions or improvements

Additional sheets attached

Signature: /s/ Koji Shinohara

Name: Koji Shinohara

Date: August 5, 2019

**EXHIBIT B**

**CALIFORNIA LABOR CODE SECTION 2870  
INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the “**Agreement**”) is made and entered into as of August 5, 2019, by and between Manabu Kamei (the “**Executive**”) and Kura Sushi USA, Inc., a Delaware corporation (the “**Company**”).

WHEREAS, the Executive is an employee and director of Kura Sushi, Inc., a Japanese corporation and controlling shareholder of the Company;

WHEREAS, Kura Sushi, Inc. has temporarily assigned the Executive to work for the Company, and Executive is currently serving as the Company’s Chief Operating Officer with applicable benefits provided by Kura Sushi, Inc.’s Expatriate Work Agreement;

WHEREAS, the Company has filed a Form S-1 Registration Statement under the Securities Act of 1993 with the Securities and Exchange Commission and anticipates effecting an initial public offering of the shares of its Class A common stock (“**IPO**”); and

WHEREAS, the Company and the Executive wish to memorialize the Executive’s existing employment relationship with the Company;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. The Executive’s employment hereunder shall be effective as of the date the IPO is effective (the “**Effective Date**”) and shall continue until Kura Sushi, Inc. ends the Executive’s temporary assignment to the Company. The period during which the Executive is employed by the Company hereunder is hereinafter referred to as the “**Employment Term**.”

2. Position and Duties.

2.1 Position. During the Employment Term, the Executive shall serve as the Chief Operating Officer of the Company, reporting to the board of directors of the Company (the “**Board**”). In such position, the Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the Board, which duties, authority, and responsibilities are consistent with the Executive’s position. The Executive shall also serve as a member of the Board for no additional compensation.

2.2 Duties. During the Employment Term, the Executive shall devote substantially all of his business time and attention to the performance of the Executive’s duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board. Notwithstanding the foregoing, the Executive will be permitted to (a) with the prior written consent of the Board act or serve as a director, trustee, committee member, or principal of any type of business, civic, or charitable organization, and (b) purchase or own less than five percent (5%) of the publicly traded securities of any corporation; provided that, such ownership represents a passive

investment and that the Executive is not a controlling person of, or a member of a group that controls, such corporation; provided further that, the activities described in clauses (a) and (b) do not interfere with the performance of the Executive's duties and responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2 hereof.

3. Place of Performance. The principal place of Executive's employment shall be the Company's principal executive office currently located at 17932 Sky Park Circle, Suite H, Irvine, California; provided that, the Executive may be required to travel on Company business during the Employment Term.

4. Compensation.

4.1 Base Salary. The Company shall pay the Executive an annual rate of base salary of \$220,000 in periodic installments in accordance with the Company's customary payroll practices and applicable wage payment laws. The Executive's base salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the base salary during the Employment Term. The Executive agrees that a portion of his base salary may be paid directly by Kura Sushi, Inc. into Executive's bank account in Japan. The Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**."

4.2 Annual Bonus.

(a) For each fiscal year of the Employment Term, the Executive shall be eligible to participate in the Company's annual short-term incentive plan (the "**Annual Bonus**"). However, the decision to provide any Annual Bonus and the amount and terms of any Annual Bonus shall be in the sole and absolute discretion of the Compensation Committee of the Board (the "**Compensation Committee**").

(b) The Annual Bonus, if any, will be paid within two and a half (2 1/2) months after the end of the applicable fiscal year.

(c) Except as otherwise provided in Section 5, (i) the Annual Bonus will be subject to the terms of the Company annual bonus plan under which it is granted and (ii) in order to be eligible to receive an Annual Bonus, the Executive must be employed by the Company on the date that Annual Bonuses are paid.

4.3 Long-Term Incentive Compensation. During the Employment Term, Executive shall be eligible to participate in the 2018 Incentive Compensation Plan established by the Company ("**Equity Incentive Plan**"). The terms of such incentive stock options shall be as set forth in the applicable Equity Incentive Plan and applicable award agreements, which shall control in the event of a conflict with this Agreement.

4.4 Company Car. During the Employment Term, the Executive shall be entitled to have full time use of a Company provided vehicle and Company coverage of insurance, maintenance and gas expenses related to the use of such vehicle.



4.5 Housing Allowance. During the Employment Term, the Executive shall be provided with a monthly housing allowance of \$2,200.

4.6 Employee Benefits. During the Employment Term, the Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, "**Employee Benefit Plans**"), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. During the Term, the Company will pay 100% of the Executive's health, dental and vision insurance premiums. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.7 Vacation; Paid Time-Off. During the Employment Term, the Executive shall be entitled to paid vacation in accordance with the Company's vacation policies, as in effect from time to time. The Executive shall receive other paid time-off in accordance with applicable law and the Company's policies for executive officers as such policies may exist from time to time.

4.8 Business Expenses. The Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Executive in connection with the performance of the Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.9 Indemnification.

(a) In the event that the Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), other than any Proceeding initiated by the Executive or the Company related to any contest or dispute between the Executive and the Company or any of its affiliates with respect to this Agreement or the Executive's employment hereunder, by reason of the fact that the Executive is or was a director or officer of the Company, or any affiliate of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, the Executive shall be indemnified and held harmless by the Company to the maximum extent permitted under applicable law and the Company's bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees), and in accordance with Executive's Indemnification Agreement.

(b) During the Employment Term and for a period of six (6) years thereafter, the Company or any successor to the Company shall purchase and maintain, at its own expense, directors' and officers' liability insurance providing coverage to the Executive on terms that are no less favorable than the coverage provided to other directors and similarly situated executives of the Company.

4.10 **Clawback Provisions.** Notwithstanding any other provision in this Agreement to the contrary, any Annual Bonus, Equity Incentive Plan compensation, or any other compensation, paid to the Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. **Termination of Employment.**

5.1 **Expiration of the Term.** The Employment Term and the Executive's employment hereunder shall automatically terminate on the last day of Executive's temporary assignment to the Company as determined by Kura Sushi, Inc. (the "**Termination Date**"). Notwithstanding anything contained herein, the Termination Date shall not occur until the date on which the Executive incurs a "separation from service" within the meaning of Code Section 409A. Upon termination of the Executive's employment during the Employment Term, the Executive shall be entitled to receive:

(a) any accrued but unpaid Base Salary and accrued but unused vacation which shall be paid on the Termination Date in accordance with the Company's customary payroll procedures;

(b) any earned but unpaid Annual Bonus in accordance with Section 4.2 herein;

(c) reimbursement for unreimbursed business expenses properly incurred by the Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy and Section 4.8 herein; and

(d) such employee benefits, including such equity awards granted under the Equity Incentive Plan, if any, to which the Executive may be entitled as of the Termination Date; provided that, in no event shall the Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a) through 5.1(d) are referred to herein collectively as the "**Accrued Amounts.**"

5.2. **Death.**

(a) The Executive's employment hereunder shall terminate automatically upon the Executive's death during the Employment Term.

(b) If the Executive's employment is terminated during the Employment Term on account of the Executive's death, the Executive (or the Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the Accrued Amounts.

5.3 Resignation of All Other Positions. Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned from all positions that the Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

5.4 Section 280G.

(a) If any of the payments or benefits received or to be received by the Executive (including, without limitation, any payment or benefits received in connection with the Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "**280G Payments**") constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code (the "**Code**") and will be subject to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), then prior to making 280G Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) payment made to the Executive of the 280G Payments after payment of the Excise Tax to (ii) the Net Benefit to the Executive if the 280G Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the 280G Payments be reduced to the minimum extent necessary to ensure that no portion of the 280G Payments are subject to the Excise Tax. "**Net Benefit**" shall mean the present value of the 280G Payments net of all federal, state, local, foreign income, employment, and excise taxes. Any reduction made pursuant to this Section 5.4(a) shall be made in a manner determined by the Company that is consistent with the requirements of Code Section 409A.

(b) All calculations and determinations under this Section 5.4 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "**Tax Counsel**") whose determinations shall be conclusive and binding on the Company and the Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.4, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and the Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.4. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

6. Cooperation. The parties agree that certain matters in which the Executive will be involved during the Employment Term may necessitate the Executive's cooperation in the future. Accordingly, following the termination of the Executive's employment for any reason, to the extent reasonably requested by the Board, the Executive shall cooperate with the Company in connection with matters arising out of the Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of the Executive's other activities.

7. Confidential Information. The Executive understands and acknowledges that during the Employment Term, he will have access to and learn about Confidential Information, as defined below.

7.1 Confidential Information Defined.

(a) Definition.

For purposes of this Agreement, “**Confidential Information**” includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Company or any of its affiliates or businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company in confidence.

The Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to the Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to the Executive; provided that, such disclosure is through no direct or indirect fault of the Executive or person(s) acting on the Executive’s behalf.

(b) Company Creation and Use of Confidential Information.

The Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the Company’s revolving sushi restaurants. The Executive understands and acknowledges that as a result of these efforts, the Company has created, and continues to use and create Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(c) Disclosure and Use Restrictions.

The Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) to not use Confidential Information except for the benefit of the Company; (iii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of the Executive's authorized employment duties to the Company or with the prior consent of the Board (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("DTSA"). Notwithstanding any other provision of this Agreement:

(i) The Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

The Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Executive first having access to such Confidential Information and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of the Executive's breach of this Agreement or breach by those acting in concert with the Executive or on the Executive's behalf.

(e) Third Party Information. Executive recognizes that the Company may have received and in the future may receive from third parties associated with the Company, e.g., the Company's customers, suppliers, licensors, licensees, partners, or collaborators ("**Associated Third Parties**") their confidential or proprietary information ("**Associated Third Party Confidential Information**"). By way of example, Associated Third Party Confidential Information may include the habits or practices, technology or requirements of Associated Third Parties, and/or information related to the business conducted between the Company and such Associated Third Parties. Executive agrees at all times during his employment with the Company and thereafter to hold any Associated Third Party Confidential Information in the strictest confidence, and not to use or to disclose it to any person, firm or corporation, except as necessary in carrying out his work for the Company consistent with the Company's agreement with such Associated Third Parties. Executive understands that unauthorized use or disclosure of Associated Third Party Confidential Information during his employment will lead to disciplinary action, up to and including immediate termination of his employment and legal action by the Company.

8. Non-Disparagement. The Executive agrees and covenants that he will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company or its businesses, or any of its employees, directors, officers, customers, suppliers, investors and other associated third parties.

This Section 8 does not, in any way, restrict or impede the Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. The Executive shall promptly provide written notice of any such order to the Board.

9. Remedies. In the event of a breach or threatened breach by the Executive of Section 7 or Section 8 of this Agreement, the Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

10. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement or any breach of this Agreement shall be submitted to and decided by binding arbitration conducted before a single arbitrator in Irvine, California. Arbitration shall be administered exclusively by JAMS pursuant to its Employment Arbitration Rules & Procedures, which can be found at <http://www.jamsadr.com/rules-employment-arbitration/> and shall be conducted consistent with the rules, regulations, and requirements thereof as well as any requirements imposed by state law. Any arbitral award determination shall be final and binding upon the parties.

11. Proprietary Rights.

11.1 Inventions Retained and Licensed. Executive has attached as Exhibit A a list describing all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets that (i) Executive conceived in whole or in part before commencing employment with the Company, and (ii) do not relate to the Company's current or proposed business, products, or research and development ("**Prior Inventions**"). If no such list is attached, Executive represents and warrants that no such Prior Inventions exist. Executive further represents and warrants that the inclusion of any Prior Inventions on Exhibit A to this Agreement will not materially affect Executive's ability to perform all obligations under this Agreement. If, in the course of his employment with the Company, Executive incorporates into or use any fully developed Prior Invention in connection with any product, process, service, technology or other work by or on behalf of Company, Executive hereby grants to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license, with the right to grant and authorize sublicenses, to make, have made, modify, use, import, offer for sale, and sell such Prior Invention as part of or in connection with such product, process, service, technology or other work and to practice any method related thereto.

11.2 Assignment of Inventions. "**Inventions**" means all inventions, discoveries, original works of authorship, developments, improvements, and trade secrets, whether or not patentable or registrable under patent, copyright or similar laws, that Executive may solely or jointly conceive, develop or reduce to practice, or cause to be conceived, developed or reduced to practice, (i) during the period of time that the Company employs Executive (including during off-duty hours), or (ii) in connection with the use of the Company's equipment, supplies, facilities, personnel, or Company Confidential Information, except as provided in Section 11.5 below. Executive will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby now assigns to the Company or to its designee(s) all of Executive's right, title, and interest in and to any and all Inventions. Executive further acknowledges that all original works of authorship that Executive may make (solely or jointly with others) within the scope of and during the period of his employment with the Company and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Executive understands and agrees that any decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit and that no royalty or other consideration will be due to him as a result of the Company's efforts to commercialize or market any such Inventions.

11.3 Maintenance of Records. Executive agrees to keep and maintain adequate, current, accurate, and authentic written records of all Inventions that Executive creates (solely or jointly with others) during the term of his employment with the Company. The records will be in the form of notes, sketches, drawings, electronic files, reports, or any other format that may be specified by the Company. The records are and will be available to, and remain the sole property of, the Company at all times.

11.4 Patent and Copyright Registrations. Executive agrees to assist the Company or its designee(s), at the Company's reasonable expense, in every proper way to secure the Company's rights in any Inventions and in any rights relating to such Inventions in any and all countries. Such assistance regarding any Inventions and/or related rights includes, without limitation, full disclosure to the Company of all pertinent information and data; the execution of all applications, specifications, oaths, assignments and all other instruments that the Company might deem proper or reasonably necessary to apply for, register, obtain, maintain, defend, and enforce such rights, and/or to assign and convey to the Company, its successors, assigns, and/or nominees the sole and exclusive rights, title and interest in and to such Inventions and any rights relating to them; and testifying in a lawsuit or other proceeding relating to such Inventions and any rights relating to them. Executive expressly agrees that his obligation to execute or cause to be executed, when it is in his power to do so, any such instrument or papers continues after the termination of this Agreement, at the Company's reasonable expense. If the Company is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature with respect to any Inventions including, without limitation, to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering such Inventions, then Executive hereby irrevocably designates and appoints the Company and/or its duly authorized officers and agents as his agent and attorney-in-fact, to act for and on his behalf and stead to execute and file any papers, oaths and to do all other lawfully permitted acts with respect to such Inventions with the same legal force and effect as if Executive executed them.

11.5 Exception to Assignments. Executive understands that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention that qualifies fully under the provisions of California Labor Code Section 2870 (the full text of which is in the attached Exhibit B). Executive will advise the Company immediately in writing of any inventions that (i) Executive might create (solely or jointly with others) after today, (ii) Executive believes meet the criteria in California Labor Code Section 2870, and (iii) are not otherwise disclosed on Exhibit A.

## 12. Security.

12.1 Security and Access. The Executive acknowledges that he has no reasonable expectation of privacy in any computer, technology system, email, handheld device, telephone, or documents that are used to conduct the business of the Company whether such device is personally owned or provided by the Company. As such, the Company has the right to



audit and search all such items and systems, without further notice to Executive, to ensure that the Company is licensed to use the software on the Company's devices in compliance with the Company's software licensing policies, to ensure compliance with the Company's policies, and for any other business-related purposes in the Company's sole discretion. Executive agrees and covenants (a) to comply with all Company security policies and procedures as in force from time to time including without limitation those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, computer systems, email systems, computer networks, document storage systems, software, data security, encryption, firewalls, passwords and any and all other Company facilities, IT resources and communication technologies ("**Facilities and Information Technology Resources**"); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive's employment by the Company, whether termination is voluntary or involuntary. The Executive agrees to notify the Company promptly in the event he learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company property or materials by others.

12.2 Exit Obligations. Upon the Company's request at any time during the Executive's employment, the Executive shall (a) provide or return to the Company any and all Company property, including keys, key cards, access cards, identification cards, security devices, employer credit cards, network access devices, computers, cell phones, equipment, speakers, webcams, manuals, reports, files, books, compilations, work product, email messages, recordings, tapes, disks, thumb drives or other removable information storage devices, hard drives, and data and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or work product, that are in the possession or control of the Executive, whether they were provided to the Executive by the Company or any of its business associates or created by the Executive in connection with his employment by the Company; and (b) delete or destroy all copies of any such documents and materials not returned to the Company that remain in the Executive's possession or control, including those stored on any non-Company devices, networks, storage locations, and media in the Executive's possession or control.

13. Publicity. The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its agents, representatives and licensees, of the Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("**Permitted Uses**") without further consent from or royalty, payment, or other compensation to the Executive. The Executive hereby forever waives and releases the Company and its directors, officers, employees, and agents from any and all claims, actions, damages, losses, costs,

expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its agents', representatives', and licensees' exercise of their rights in connection with any Permitted Uses.

14. Governing Law, Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of California without regard to conflicts of law principles. Subject to Section 10 of this Agreement, any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of California, County of Orange. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

15. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

16. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Executive and by a director of the Company. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

17. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

18. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

19. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. Section 409A.

20.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Payments made under this Agreement with respect to a termination from employment, shall be considered made only upon a “separation from service” as defined in Internal Revenue Code Section 409A (“**Code Section 409A**”). It is further intended that such payments are not deferred compensation subject to Code Section 409A to the extent that such payments are covered by (a) the “short-term deferral exception” set forth in Treas. Reg. Section 1.409A-1(b)(4), (b) the “two times severance exception” set forth in Treas. Reg. Section 1.409A-1(b)(9)(iii), or (c) the “limited payments exception” set forth in Treas. Reg. Section 1.409A-1(b)(9)(v)(D). The short-term deferral exception, the two times severance exception and the limited payments exception shall be applied to the payments hereunder, as applicable, in order of payment in such a manner as results in the maximum exclusion of such payments from treatment as deferred compensation under Code Section 409A. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Executive on account of non-compliance with Section 409A.

20.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Executive in connection with his termination of employment is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A and the Executive is determined to be a “specified employee” as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on the Executive’s death (the “**Specified Employee Payment Date**”). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Executive’s separation from service occurs shall be paid to the Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

20.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;
- (b) any reimbursement of an eligible expense shall be paid to the Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and
- (c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

22. Successors and Assigns. This Agreement is personal to the Executive and shall not be assigned by the Executive. Any purported assignment by the Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

23. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company at:

Kura Sushi USA, Inc.  
17932 Sky Park Circle, Suite H  
Irvine, CA 92614  
Attention: President

with a copy to:

Squire Patton Boggs (US) LLP  
555 S. Flower Street, 31st Floor  
Los Angeles, CA 90071  
Attention: Hiroki Suyama, Esq.

If to the Executive at:

Manabu Kamei  
2801 Alton Parkway, #203  
Irvine, CA 92606

25. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

26. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

27. Acknowledgement of Full Understanding. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

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

KURA SUSHI USA, INC,  
a Delaware corporation

EXECUTIVE

By: /s/ Hajime Uba

Signature: /s/ Manabu Kamei

Name: Hajime Uba

Print Name: Manabu Kamei

Title: President and CEO

**EXHIBIT A**

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>

No inventions or improvements

Additional sheets attached

Signature: /s/ Manabu Kamei

Name: Manabu Kamei

Date: August 5, 2019

**EXHIBIT B**

**CALIFORNIA LABOR CODE SECTION 2870  
INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

**For Immediate Release****KURA SUSHI USA ANNOUNCES CLOSING OF INITIAL PUBLIC OFFERING AND FULL EXERCISE OF UNDERWRITERS' OPTION TO PURCHASE ADDITIONAL SHARES**

IRVINE, Calif. – (GLOBE NEWSWIRE) – August 5, 2019 – Kura Sushi USA, Inc. (Nasdaq:KRUS), a fast-growing technology-enabled Japanese restaurant concept, today announced the closing of its initial public offering of 3,335,000 shares of its Class A common stock, which includes the full exercise of the underwriters' option to purchase up to an additional 435,000 shares, at a price to the public of \$14.00 per share. The shares began trading on the Nasdaq Global Market under the ticker symbol "KRUS" on August 1, 2019.

BMO Capital Markets Corp. and Stephens Inc. acted as joint book-running managers for this offering. BTIG, LLC and Roth Capital Partners acted as lead managers, and Maxim Group LLC acted as a co-manager.

The offering was made only by means of a prospectus filed as part of an effective registration statement filed with the Securities and Exchange Commission on Form S-1. Copies of the final prospectus relating to this offering may be obtained from BMO Capital Markets Corp., Attention: Prospectus Department, 3 Times Square, New York, NY 10036, by email at [bmopropectus@bmo.com](mailto:bmopropectus@bmo.com); or Stephens Inc., Attention: Prospectus Department, 111 Center Street, Little Rock, AR 72201, by email at [prospectus@stephens.com](mailto:prospectus@stephens.com).

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

**About Kura Sushi USA**

Kura Sushi USA, Inc. is a technology-enabled Japanese restaurant concept with 22 locations in five states. The Company offers guests a distinctive dining experience built on authentic Japanese cuisine and an engaging revolving sushi service model. Kura Sushi USA, Inc. was established in 2008 as a subsidiary of Kura Sushi, Inc., a Japan based revolving sushi chain with over 400 restaurants and 35 years of brand history.

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