

## Section 1: 10-Q

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2019

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-32501

**REED'S, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State of incorporation)

35-2177773

(I.R.S. Employer Identification No.)

201 Merritt 7, Norwalk, CT

(Address of principal executive offices)

06851

(Zip Code)

(800) 997-3337

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

No Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock	REED	The NASDAQ Stock Market LLC

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. There were a total of 47,595,206 shares of Common Stock outstanding as of November 11, 2019.

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### *Special Note Regarding Forward-Looking Statements*

*This Quarterly Report on Form 10-Q, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 2 of Part I of this report includes forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance, or achievements expressed or implied by forward-looking statements.*

*In some cases, you can identify forward-looking statements by terminology such as “may,” “should,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential,” “proposed,” “intended,” or “continue” or the negative of these terms or other comparable terminology. You should read statements that contain these words carefully, because they discuss our expectations about our future operating results or our future financial condition or state other “forward-looking” information. There may be events in the future that we are not able to accurately predict or control. Before you invest in our securities, you should be aware that the occurrence of any of the events described in this Quarterly Report could substantially harm our business, results of operations and financial condition, and that upon the occurrence of any of these events, the trading price of our securities could decline and you could lose all or part of your investment. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, growth rates, levels of activity, performance or achievements. We are under no duty to update any of the forward-looking statements after the date of this Quarterly Report to conform these statements to actual results.*

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Part I – FINANCIAL INFORMATION

Item 1. Financial Statements

**REED'S INC.**  
**CONDENSED BALANCE SHEETS**  
(Amounts in thousands, except share amounts)

	<b>September 30, 2019</b>	<b>December 31, 2018</b>
	<b>(Unaudited)</b>	
<b>ASSETS</b>		
Current assets:		
Cash	\$ 1,016	\$ 624
Accounts receivable, net of allowance for doubtful accounts and returns and discounts of \$223 and \$623, respectively	4,129	2,608
Receivable from related party	-	195
Inventory, net of reserve for obsolescence of \$522 and \$197, respectively	9,575	7,380
Prepaid expenses and other current assets	470	131
<i>Total current assets</i>	15,190	10,938
Property and equipment, net of accumulated depreciation of \$438 and \$342, respectively	1,053	896
Equipment held for sale, net of impairment reserves of \$118 and \$118, respectively	82	82
Intangible assets	576	576
<b>Total assets</b>	<b>\$ 16,901</b>	<b>\$ 12,492</b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 5,525	\$ 5,721
Accrued expenses	1,141	1,483
Revolving line of credit	7,079	6,980
Current portion of leases payable	51	51
<i>Total current liabilities</i>	13,796	14,235
Leases payable, less current portion	747	801
Convertible note to a related party	4,551	4,161
Warrant liability	15	38
<b>Total liabilities</b>	<b>19,109</b>	<b>19,235</b>
<b>Stockholders' deficit:</b>		
Series A Convertible Preferred stock, \$10 par value, 500,000 shares authorized, 9,412 shares issued and outstanding	94	94
Common stock, \$.0001 par value, 70,000,000 shares authorized, 33,720,044 and 25,729,461 shares issued and outstanding, respectively	3	3
Additional paid in capital	70,420	53,591
Accumulated deficit	(72,725)	(60,431)
<b>Total stockholders' deficit</b>	<b>(2,208)</b>	<b>(6,743)</b>
<b>Total liabilities and stockholders' deficit</b>	<b>\$ 16,901</b>	<b>\$ 12,492</b>

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

**REED'S, INC.**  
**CONDENSED STATEMENTS OF OPERATIONS**  
**For the Three and Nine months Ended September 30, 2019 and 2018**  
**(Unaudited)**  
**(Amounts in thousands, except share and per share amounts)**

	<u>Three Months Ended</u>		<u>Nine months Ended</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
<b>Net sales</b>	\$ 8,740	\$ 10,796	\$ 26,669	\$ 28,473
Cost of goods sold	6,238	8,115	19,390	20,447
<b>Gross profit</b>	<u>2,502</u>	<u>2,681</u>	<u>7,279</u>	<u>8,026</u>
<b>Operating expenses:</b>				
Delivery and handling expense	1,902	1,395	4,369	3,598
Selling and marketing expense	2,508	1,378	7,718	3,601
General and administrative expense	2,470	1,987	6,587	6,853
Gain on sale of assets	-	-	(30)	-
<b>Total operating expenses</b>	<u>6,880</u>	<u>4,760</u>	<u>18,644</u>	<u>14,052</u>
<b>Loss from operations</b>	(4,378)	(2,079)	(11,365)	(6,026)
Interest expense	(318)	(621)	(947)	(1,542)
Change in fair value of warrant liability	131	26	23	(97)
<b>Net loss</b>	(4,565)	(2,674)	(12,289)	(7,665)
<b>Dividends on Series A Convertible Preferred Stock</b>	-	-	(5)	(5)
<b>Net loss attributable to common stockholders</b>	<u>\$ (4,565)</u>	<u>\$ (2,674)</u>	<u>\$ (12,294)</u>	<u>\$ (7,670)</u>
<b>Loss per share – basic and diluted</b>	<u>\$ (0.14)</u>	<u>\$ (0.10)</u>	<u>\$ (0.38)</u>	<u>\$ (0.30)</u>
Weighted average number of shares outstanding – basic and diluted	33,716,359	25,587,191	32,179,119	25,242,780

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

**REED'S, INC.**  
**CONDENSED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**For the Three and Nine months Ended September 30, 2019 and 2018**  
**(Unaudited)**  
**(Amounts in thousands except share amounts)**

	Common Stock		Preferred Stock		Common Stock Issuable		Additional Paid In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
	<b>Balance, June 30, 2019</b>	33,708,826	\$ 3	9,411	\$ 94	-			
Fair value of vested options							223		223
Shares granted to Directors for services	8,072						29		29
Fair value of vested restricted shares granted to an officer for services							116		116
Exercise of warrants	3,146						1		1
Net Loss								(4,565)	(4,560)
<b>Balance, September 30, 2019</b>	<u>33,720,044</u>	<u>\$ 3</u>	<u>9,411</u>	<u>\$ 94</u>	<u>0</u>	<u>\$ -</u>	<u>\$ 70,420</u>	<u>\$ (72,725)</u>	<u>\$ (2,208)</u>

	Common Stock		Preferred Stock		Common Stock Issuable		Additional Paid In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
	<b>Balance, December 31, 2018</b>	25,729,461	\$ 3	9,411	\$ 94	-			
Fair value of vested options							1,077		1,077
Shares granted to Directors for services	33,796						115		115
Fair value of vested restricted shares granted to an officer for services							405		405
Dividends on Series A Convertible Preferred Stock								(5)	(5)
Common shares issued pursuant to the rights offering, net of offering costs	7,733,750						14,867		14,867
Exercise of warrants	223,037						365		365
Net Loss								(12,289)	(12,289)
<b>Balance, September 30, 2019</b>	<u>33,720,044</u>	<u>\$ 3</u>	<u>9,411</u>	<u>\$ 94</u>	<u>0</u>	<u>\$ -</u>	<u>\$ 70,420</u>	<u>\$ (72,725)</u>	<u>\$ (2,208)</u>

	Common Stock		Preferred Stock		Common Stock Issuable		Additional Paid In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
	<b>Balance, June 30, 2018</b>	25,525,996	\$ 3	9,411	\$ 94	634,254			
Fair value of vested options							394		394
Shares granted to Directors for services	37,052						100		100
Fair value vesting of restricted common stock						542	(593)		(51)
Dividends on Series A Convertible Preferred Stock	1,734						5		5
Common shares issued to Directors for services provided in 2018	18,237				(18,237)	128	(128)		-
Exercise of warrants	75,140						136		136
Net Loss								(2,674)	(2,674)
<b>Balance, September 30, 2018</b>	<u>25,658,159</u>	<u>\$ 3</u>	<u>9,411</u>	<u>\$ 94</u>	<u>616,017</u>	<u>\$ 754</u>	<u>\$ 52,096</u>	<u>\$ (57,771)</u>	<u>\$ (4,824)</u>

	Common Stock		Preferred Stock		Common Stock Issuable		Additional Paid In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
	<b>Balance, December 31, 2017</b>	24,619,591	\$ 2	9,411	\$ 94	400,000			
Fair value of vested options							864		864
Shares granted to Directors for services	37,052						100		100
Fair value vesting of restricted common stock					854,592	655			655
Dividends on Series A Convertible Preferred Stock	1,734						5	(5)	-
Common shares issued to Directors for services provided in 2018	638,575				(638,575)	(581)	581		-
Exercise of warrants	361,207	1					713		714
Net Loss								(7,665)	(7,665)
<b>Balance, September 30, 2018</b>	<u>25,658,159</u>	<u>\$ 3</u>	<u>9,411</u>	<u>\$ 94</u>	<u>616,017</u>	<u>\$ 754</u>	<u>\$ 52,096</u>	<u>\$ (57,771)</u>	<u>\$ (4,824)</u>

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

**REED'S, INC.**  
**CONDENSED STATEMENTS OF CASH FLOWS**  
**For the Nine months Ended September 30, 2019 and 2018**  
**(Unaudited)**  
**(Amounts in thousands)**

	<u>September 30, 2019</u>	<u>September 30, 2018</u>
<i>Cash flows from operating activities:</i>		
<b>Net loss</b>	\$ (12,289)	\$ (7,665)
<i>Adjustments to reconcile net loss to net cash used in operating activities:</i>		
Depreciation	12	492
Gain on sale of property & equipment	(30)	-
Loss on termination of leases	2	94
Amortization of debt discount	225	-
Amortization of right of use assets	96	82
Stock options issued to employees for services	1,077	864
Common stock issuable for services	-	655
Common stock issued for services	520	100
Decrease in allowance for doubtful accounts	(400)	(37)
Increase in inventory reserve	325	126
Increase/(decrease) in fair value of warrant liability	(23)	97
Accrual of interest on convertible note to a related party	390	346
Lease liability	(10)	-
<i>Changes in operating assets and liabilities:</i>		
Accounts receivable	(1,121)	(1,077)
Inventory	(2,520)	(1,236)
Prepaid expenses and other assets	(339)	(239)
Accounts payable	(196)	(4,100)
Accrued expenses	(347)	1,648
Other long term obligations	-	(16)
<b>Net cash used in operating activities</b>	<u>(14,628)</u>	<u>(10,496)</u>
<i>Cash flows from investing activities:</i>		
Proceeds from sale of property and equipment	30	52
Purchase of property and equipment	(273)	(102)
<b>Net cash used in investing activities</b>	<u>(243)</u>	<u>(50)</u>
<i>Cash flows from financing activities:</i>		
Borrowings on line of credit	42,179	13,495
Repayments of line of credit	(42,175)	(14,107)
Capitalization of financing cost	(130)	-
Principal repayments on capital expansion loan	-	(907)
Principal repayments on long term financial obligation	-	(174)
Advances from officers	-	50
Repayment of amounts due to/from officers	195	(277)
Principal repayments on capital lease obligation	(38)	(187)
Exercise of warrants	365	714
Proceeds from sale of common stock	14,867	-
<b>Net cash provided by (used in) financing activities</b>	<u>15,263</u>	<u>(1,393)</u>
Net increase/(decrease) in cash	392	(11,939)
Cash at beginning of period	624	12,127
Cash at end of period	<u>\$ 1,016</u>	<u>\$ 188</u>
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for interest	\$ 408	\$ 971
<b>Non Cash Investing and Financing Activities</b>		
Dividends on Series A Convertible Preferred Stock	\$ 5	\$ 5
Vendor credits issued for fixed asset purchases	\$ -	\$ 108

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

**REED'S, INC.**  
**NOTES TO CONDENSED FINANCIAL STATEMENTS**  
**Three and Nine months Ended September 30, 2019 and 2018 (Unaudited)**  
**(In thousands, except share and per share amounts)**

**1. Basis of Presentation and Liquidity**

The accompanying interim condensed financial statements of Reed's, Inc. (the "Company", "we", "us", or "our"), are unaudited, but in the opinion of management contain all adjustments, including normal recurring adjustments, necessary to present fairly our financial position at September 30, 2019 and the results of operations and cash flows for the three and nine months ended September 30, 2019 and 2018. The balance sheet as of December 31, 2018 is derived from the Company's audited financial statements.

Certain information and footnote disclosures normally included in financial statements that have been prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. We believe that the disclosures contained in these condensed financial statements are adequate to make the information presented herein not misleading. For further information, refer to the financial statements and the notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018, as filed with the Securities and Exchange Commission on April 1, 2019.

The results of operations for the nine months ended September 30, 2019 are not necessarily indicative of the results of operations to be expected for the full fiscal year ending December 31, 2019.

**Liquidity**

The accompanying financial statements have been prepared under the assumption that the Company will continue as a going concern. Such assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business.

For the nine months ended September 30, 2019, the Company recorded a net loss of \$12,289 and used cash in operations of \$14,628. As of September 30, 2019, we had a cash balance of \$1,016 with borrowing capacity of \$1,019, a stockholders' deficit of \$2,208 and a working capital of \$1,394 compared to a cash balance of \$624, stockholders' deficit of \$6,743 and working capital shortfall of \$3,297 at December 31, 2018. On February 20, 2019, the Company conducted a public offering of 7,733,750 shares of its common stock at \$2.10 per share resulting in net proceeds to the Company of \$14,867. In October 2019, the Company conducted a public offering of 13,416,667 shares of its common stock at \$0.60 per share resulting in net proceeds to the Company of \$7,536.

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. We have taken decisive action to improve our margins, including fully outsourcing our manufacturing process, streamlining our product portfolio, negotiating improved vendor contracts and restructuring our selling prices.

**2. Significant Accounting Policies**

**Revenue Recognition**

The Company recognizes revenue in accordance with ASU 2014-09, Revenue from Contracts with Customers (Topic 606), ("ASC 606"). The underlying principle of ASC 606 is to recognize revenue to depict the transfer of goods or services to customers at the amount expected to be collected. ASC 606 creates a five-step model that requires entities to exercise judgment when considering the terms of contract(s), which include (1) identifying the contract or agreement with a customer, (2) identifying our performance obligations in the contract or agreement, (3) determining the transaction price, (4) allocating the transaction price to the separate performance obligations, and (5) recognizing revenue as each performance obligation is satisfied.

The Company does not have any significant contracts with customers requiring performance beyond delivery, and contracts with customers contain no incentives or discounts that could cause revenue to be allocated or adjusted over time. Shipping and handling activities are performed before the customer obtains control of the goods and therefore represent a fulfillment activity rather than a promised service to the customer. Revenue and costs of sales are recognized when control of the products transfers to our customer, which generally occurs upon shipment from our facilities. The Company's performance obligations are satisfied at that time.

All of the Company's products are offered for sale as finished goods only, and there are no performance obligations required post-shipment for customers to derive the expected value from them.

The Company does not allow for returns, except for damaged products when the damage occurred pre-fulfillment. Damaged product returns have historically been insignificant. Because of this, the stand-alone nature of our products, and our assessment of performance obligations and transaction pricing for our sales contracts, we do not currently maintain a contract asset or liability balance for obligations. We assess our contracts and the reasonableness of our conclusions on a quarterly basis.

### Loss per Common Share

Basic earnings (loss) per share is computed by dividing the net income (loss) applicable to common stockholders by the weighted average number of shares of common stock outstanding during the year. Diluted earnings (loss) per share is computed by dividing the net income applicable to common stockholders by the weighted average number of common shares outstanding plus the number of additional common shares that would have been outstanding if all dilutive potential common shares had been issued, using the treasury stock method. Potential common shares are excluded from the computation when their effect is antidilutive.

For the periods ended September 30, 2019 and 2018, the calculations of basic and diluted loss per share are the same because potential dilutive securities would have had an anti-dilutive effect. The potentially dilutive securities consisted of the following:

	<u>September 30, 2019</u>	<u>September 30, 2018</u>
Convertible note to a related party	2,266,667	2,266,667
Warrants	6,413,782	6,951,173
Common stock equivalent of Series A Convertible Preferred Stock	37,644	37,644
Unvested restricted common stock	610,609	616,017
Options	4,373,566	3,440,904
Total	<u>13,702,268</u>	<u>13,312,405</u>

The Series A Convertible Preferred Stock is convertible into Common shares at the rate of 1:4.

### Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Those estimates and assumptions include estimates for reserves of uncollectible accounts, inventory obsolescence, depreciable lives of property and equipment, analysis of impairments of recorded long-term tangible and intangible assets, realization of deferred tax assets, accruals for potential liabilities and assumptions made in valuing stock instruments issued for services.

### Recent Accounting Pronouncements

In September 2018, the FASB issued ASU No. 2018-07, "Compensation – Stock Compensation (Topic 718); Improvements to Non-Employee Share-Based Payment Accounting" ("ASU 2018-07"). ASU 2018-07 generally aligns the measurement and classification of share-based awards to non-employees with that of share-based awards to employees. Non-employee equity awards will be measured at the fair value of the equity instruments to be issued, as of the grant date, and the resulting amount will be recognized as expense over the expected or contractual term of the award. The ASU applies to all share-based payments to nonemployees in exchange for goods or services used or consumed in an entity's own operations. It does not apply to instruments issued to a lender or investor in a financing transaction, or to instruments granted when selling goods or services to customers. ASU 2018-07 is effective for annual periods beginning after December 15, 2018, and interim periods within those annual periods. The Company adopted the provisions of ASU 2018-07 in the quarter beginning January 1, 2019. The adoption of ASU 2018-07 did not have any impact on the Company's financial statement presentation or disclosures.

In August 2018, the FASB issued ASU 2018-13, “Fair Value Measurement (Topic 820): Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement.” ASU 2018-13 amends certain disclosure requirements pertaining to fair value measurement, and is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. The adoption of ASU 2018-13 is not expected to have a material impact on the Company’s financial position, results of operations, and cash flows.

Other recent accounting pronouncements issued by the FASB, its Emerging Issues Task Force, the American Institute of Certified Public Accountants, and the Securities and Exchange Commission did not or are not believed by management to have a material impact on the Company’s present or future consolidated financial statements.

### **Concentrations**

*Gross sales.* During the three months ended September 30, 2019, the Company’s largest two customers accounted for 15% and 12% of gross sales, respectively. During the nine months ended September 30, 2019, these customers accounted for 23% and 13% of gross sales, respectively. During the three months ended September 30, 2018, the two largest customers accounted for 22% and 18% of gross sales, respectively. During the nine months ended September 30, 2018, the two largest customers accounted for 24% and 13% of gross sales, respectively.

*Accounts receivable.* As of September 30, 2019, the Company had accounts receivable from one customer which comprised 14% of its gross accounts receivable. As of December 31, 2018, accounts receivable from two customers comprised 36% and 19% of total accounts receivable, respectively.

*Purchases from vendors.* During the three months ended September 30, 2019, the Company’s largest three vendors accounted for approximately 13%, 11% and 10% of all purchases, respectively. During the nine months ended September 30, 2019, two vendors accounted for 12% and 10% of all purchases, respectively. During the three months ended September 30, 2018, the Company’s largest vendor accounted for approximately 10% of all purchases. During the nine months ended September 30, 2018, 15% of all purchases were made from this vendor.

*Accounts payable.* As of September 30, 2019, the Company’s largest three vendors accounted for 23%, 18% and 14% of the total accounts payable, respectively. As of September 30, 2018, a single vendor accounted for 15% of the Company’s total accounts payable. As of December 31, 2018, one vendor accounted for 24% of total accounts payable.

### **Fair Value of Financial Instruments**

The Company uses various inputs in determining the fair value of its financial assets and liabilities and measures these assets on a recurring basis. Financial assets recorded at fair value are categorized by the level of subjectivity associated with the inputs used to measure their fair value. Accounting Standards Codification Section 820 defines the following levels of subjectivity associated with the inputs:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly.

Level 3—Unobservable inputs based on the Company’s assumptions.

The carrying amounts of financial assets and liabilities, such as cash and cash equivalents, accounts receivable, short-term bank loans, accounts payable, notes payable and other payables, approximate their fair values because of the short maturity of these instruments. The carrying values of capital lease obligations and long-term financing obligations approximate their fair values because interest rates on these obligations are based on prevailing market interest rates.

As of September 30, 2019, and December 31, 2018, the Company's balance sheets included warrant liabilities aggregating \$15 and \$38 respectively, measured at fair value based on Level 3 inputs.

### 3. Inventory

Inventory is valued at the lower of cost (first-in, first-out) or net realizable value, and net of reserves is comprised of the following (in thousands):

	<b>September 30, 2019</b>	<b>December 31, 2018</b>
Raw Materials and Packaging	\$ 5,962	\$ 3,053
Finished Goods	3,613	4,327
<b>Total</b>	<b>\$ 9,575</b>	<b>\$ 7,380</b>

The Company has recorded a reserve for slow moving and potentially obsolete inventory. The reserve at September 30, 2019 and December 31, 2018 was \$522 and \$197, respectively.

### 4. Property and Equipment

Property and equipment is comprised of the following (in thousands):

	<b>September 30, 2019</b>	<b>December 31, 2018</b>
Right-of-use assets under operating leases	\$ 730	\$ 730
Right-of-use assets under finance leases	179	204
Computer hardware and software	582	304
Total cost	1,491	1,238
Accumulated depreciation and amortization	(438)	(342)
<b>Net book value</b>	<b>\$ 1,053</b>	<b>\$ 896</b>

Depreciation expense for the three months ended September 30, 2019 and 2018 was \$8 and \$155 respectively. Depreciation expense for the nine months then ended was \$12 and \$492, respectively.

### 5. Intangible Assets

Intangible assets are comprised of brand names acquired, specifically Virgil's. They have been assigned an indefinite life, as we currently anticipate that they will contribute cash flows to the Company perpetually. These indefinite-lived intangible assets are not amortized but are assessed for impairment annually and evaluated annually to determine whether the indefinite useful life remains appropriate. We first assess qualitative factors to determine whether it is more likely than not that the asset is impaired. If further testing is necessary, we compare the estimated fair value of our asset with its book value. If the carrying amount of the asset exceeds its fair value, as determined by the discounted cash flows expected to be generated by the asset, an impairment loss is recognized in an amount equal to that excess. Based on management's measurement, there were no indications of impairment at September 30, 2019.

### 6. Receivable from a Related Party

As of December 31, 2018, the Company had outstanding receivable from California Custom Beverage (CCB), an entity owned by Christopher J. Reed, founder, chief innovation officer and board member of Reed's. The receivable consisted of certain costs such as sales tax and prepayments arising from the sale of the Los Angeles plant on December 31, 2018 to CCB. Such amount was collected from CCB during the nine months ended September 30, 2019. Amount was outstanding was \$0 and \$195, as of September 30, 2019 and December 31, 2018, respectively.

### 7. Line of Credit

Amounts outstanding under the Company's credit facilities are as follows (in thousands):

	<b>September 30, 2019</b>	<b>December 31, 2018</b>
Line of Credit	\$ 7,661	\$ 7,657
Capitalized finance costs	(582)	(677)
<b>Net balance</b>	<b>\$ 7,079</b>	<b>\$ 6,980</b>

On October 4, 2018, the Company entered into a financing agreement with Rosenthal & Rosenthal, Inc. The Company incurred \$882 of direct costs in conjunction with the transaction, consisting primarily of broker, bank and legal fees, and \$161 cost of warrant modification. The Company annually incurs an additional \$130 of fees from the bank, which is equal to 1% of the \$13,000 borrowing limit. These costs have been capitalized and recorded as a debt discount and are being amortized over the 2.5 year life of the Rosenthal agreement. Amortization of debt discount was \$225 for the nine months ended September 30, 2019. The line of credit matures on April 20, 2021 and has \$1,019 of unused borrowing capacity under the financing agreement as of September 30, 2019.



The line of credit is secured by substantially all of the assets of the Company. Additionally, the over-advance is guaranteed by an irrevocable stand-by letter of credit in the amount of \$1,500, issued by Daniel J. Doherty III and the Daniel J. Doherty, III 2002 Family Trust, affiliates of Raptor/Harbor Reeds SPV LLC (“Raptor”). Raptor beneficially owns 20.1% of the Company’s outstanding common stock as of September 30, 2019. Mr. Doherty is a member of the Company’s Board of Directors. In the event of a default under the financing agreement, Raptor has a put option to purchase from Rosenthal the entire amount of any outstanding over-advance plus accrued interest, prior to Rosenthal declaring an event of default under the financing agreement.

As part of the transaction, the Company issued an amended and restated subordinated convertible non-redeemable secured note to Raptor, to provide for additional advances of up to \$4,000 in the event that Raptor exercises its put option described above. Consequently, the exercise price of 750,000 of Raptor’s outstanding warrants to purchase the Company’s common stock was reduced from \$1.50 to \$1.10, resulting in an increase in the fair value of the warrants of \$161. This amount has been reflected as a capitalized finance cost and is being amortized over the life of the financing agreement.

The financing agreement with Rosenthal includes customary restrictions that limit our ability to engage in certain types of transactions, including our ability to utilize tangible and intangible assets as collateral for other indebtedness. Additionally, the agreement contains a financial covenant that requires us to meet certain minimum working capital and tangible net worth thresholds as of the end of each quarter. We were in compliance with the terms of our agreement with Rosenthal as of September 30, 2019.

#### *Interest Rates*

Borrowings under the Rosenthal financing agreement bear interest at the greater of prime or 4.75%, plus an additional 2% to 3.5% depending upon whether the borrowing is based upon receivables, inventory or is an Over-Advance. The effective interest rate as of September 30, 2019 on outstanding borrowings was 8.2%. Additionally, the line of credit is subject to monthly facility and administration fees, and aggregate minimum monthly fees (including interest) of \$4.

### **8. Leases Payable**

The Company adopted ASU 2016-02, Leases, effective October 1, 2018. The standard requires a lessee to record a right-of-use asset and a corresponding lease liability at the inception of the lease, initially measured at the present value of the lease payments. As a result, we recorded right-of-use assets aggregating \$862 as of October 1, 2018, utilizing a discount rate of 12.60%. That amount consists of new leases on the Company’s Norwalk office and certain office equipment of \$730, and existing capitalized leases reclassified to right of use assets of \$132.

ASU 2016-02 requires recognition in the statement of operations of a single lease cost, calculated so that the cost of the lease is allocated over the lease term, generally on a straight-line basis. During the nine months ended September 30, 2019, the Company reflected amortization of right of use asset of \$96 related to these leases, resulting in a net asset balance of \$730 as of September 30, 2019.

In accordance with ASU 2016-02, the right-of-use assets are being amortized over the life of the underlying leases.

As of December 31, 2018, liabilities recorded under finance leases and operating leases were \$133 and \$719, respectively. During the nine months ended September 30, 2019, the Company made payments of \$38 towards finance lease liability and \$18 towards operating lease liability. As of September 30, 2019, liability under finance lease amounted to \$97 and liability under operating lease amounted to \$701, of which \$24 and \$27 were reflected as current due, under finance leases and operating leases, respectively.

As of September 30, 2019, the weighted average remaining lease terms for operating lease and finance lease are 5.26 years and 1.25 years, respectively. The weighted average discount rate for operating lease is 12.60% and 6.93% for finance lease.

## 9. Convertible Note to a Related Party

The Convertible Note to a Related Party consists of the following (in thousands):

	September 30, 2019	December 31, 2018
12% Convertible Note Payable	\$ 3,400	\$ 3,400
Accrued Interest	1,151	761
<b>Total obligation</b>	<b>\$ 4,551</b>	<b>\$ 4,161</b>

On April 21, 2017, pursuant to a Securities Purchase Agreement, the Company issued a secured, convertible, subordinated, non-redeemable note in the principal amount of \$3,400 (the “Raptor Note”) and warrants to purchase 1,416,667 shares of common stock. The purchaser, Raptor/Harbor Reeds SPV LLC (“Raptor”), beneficially owned approximately 20.1% and 27.1% of the Company’s common stock at September 30, 2019 and December 31, 2018, respectively.

The note bears interest at a rate of 12% per annum, compounded monthly. It is secured by the Company’s assets, subordinate to the first priority security interest of Rosenthal & Rosenthal. The note may not be prepaid and matures on April 21, 2021. It may be converted, at any time and from time to time, into shares of common stock of the Company, at a revised conversion price of \$1.50.

The warrant will expire on April 21, 2022 and has an adjusted exercise price of \$1.50 per share. The note and warrant contain customary anti-dilution provisions, and the shares of common stock issuable upon conversion of the note and exercise of the warrant have been registered on Form S-3. The investor was also granted the right to participate in future financing transactions of the Company for a term of two years.

On October 4, 2018, in connection with the execution of the Rosenthal financing agreement, the Company issued an amended and restated subordinated convertible non-redeemable secured note to Raptor, to provide for additional advances of up to \$4,000. In consideration therefore, the exercise price of 750,000 of Raptor’s outstanding warrants was reduced from \$1.50 to \$1.10, resulting in an increase in the fair value of the warrants, determined in accordance with the Black-Scholes-Merton option pricing model, of \$161. This amount was recorded as a debt discount to the Rosenthal line of credit and is being amortized as interest expense over the life of the financing agreement (See Note 7).

## 10. Warrant Liability

Certain of the Company’s outstanding warrants require the Company to pay cash to the warrant holders, in the event of a fundamental transaction as defined. Such warrants are accounted for as liabilities in accordance with ASC 480. These liabilities are measured at fair value each reporting period and the change in the fair value is recognized in earnings in the accompanying Statements of Operations.

The fair value of the warrant liability was determined using the Black-Scholes-Merton option pricing model at September 30, 2019 and December 31, 2018, using the following assumptions:

	September 30, 2019	December 31, 2018
Stock Price	\$ 1.30	\$ 2.07
Risk free interest rate	2.26%	2.69%
Expected volatility	69.95%	50.07%
Expected life in years	1.67	2.42
Expected dividend yield	0%	0%
<b>Fair Value - Warrants</b>	<b>\$ 15</b>	<b>\$ 38</b>

The risk-free interest rate is based on rates established by the Federal Reserve Bank. The Company uses the historical volatility of its common stock to estimate its future volatility. The expected life of the warrant is based upon its remaining contractual life. The expected dividend yield reflects that the Company has not paid dividends to its common stockholders in the past and does not expect to do so in the foreseeable future.

	September 30, 2019	September 30, 2018
Beginning Balance	\$ 38	\$ 36
Change in fair value	(23)	97
<b>Ending balance</b>	<b>\$ 15</b>	<b>\$ 133</b>

## 11. Stock Based Activity

### Common stock issuance

In February 2019, the Company conducted a public offering 7,733,750 shares of its common shares including 1,008,750 shares sold pursuant to the underwriters' full exercise of their option to purchase additional shares to cover over-allotments, at a public offering price of \$2.10 per share. The net proceeds to the Company from this offering are \$14,867, after deducting underwriting discounts and commissions and other offering expenses. Proceeds from the offering will provide capital to fund the growth of our business, new products, sales and marketing efforts, working capital, and for general corporate purposes.

### Restricted common stock

The following table summarizes restricted stock activity during the nine months ended September 30, 2019:

	Unvested Shares	Fair Value	Weighted Average Grant Date Fair Value
Balance, December 31, 2018	598,370	\$ 592	1.63
Granted	46,035	\$ 132	2.87
Vested	(33,796)	\$ (477)	
Issued	-	-	
Balance, September 30, 2019	<u>610,609</u>	<u>\$ 246</u>	<u>1.13</u>

Prior to January 1, 2019, the Company issued 854,592 shares of restricted common stock to the Company's Chief Executive Officer and members of the board valued at \$1,413, of which 256,222 shares have vested, and \$820 has been recognized as an expense.

During the nine months ended September 30, 2019, the Company issued an additional 17,652 shares of restricted stock to members of the board of directors. These shares vested immediately upon issuance during February 2019. The aggregate fair value of the stock awards was \$44 based on the market price of our common stock at \$2.49 per share on the date of grant, which were amortized in full during February 2019.

During the nine months ended September 30, 2019, the Company issued an additional 24,216 shares of restricted stock to members of the board of directors. These shares vest through November 2019 over 3 equal periods, and remain subject to forfeiture if vesting conditions are not met. The aggregate fair value of the stock awards was \$76 based on the market price of our common stock at \$3.14 per share on the date of grant, which will be amortized through November 2019.

During the nine months ended September 30, 2019, the Company issued an additional 4,167 shares of restricted stock to a member of the board of directors. These shares vest in November 2019 and remain subject to forfeiture if vesting conditions are not met. The aggregate fair value of the stock awards was \$12 based on the market price of our common stock at \$3.00 per share on the date of grant, which will be amortized through November 2019.

On October 31, 2019, the Company and the Chief Executive Officer entered into a separation agreement extending the vesting of the 392,002 shares that were scheduled to vest on June 29, 2019 to October 31, 2019.

The total fair value of restricted common stock vesting during the nine months ended September 30, 2019 was \$477 and is included in general and administrative expenses in the accompanying statements of operations. As of September 30, 2019, the amount of unvested compensation related to issuances of restricted common stock was \$246, which will be recognized as an expense in future periods as the shares vest.

### Stock options

	Shares	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2018	3,674,236	\$ 2.16		
Granted	1,404,840	\$ 2.52		
Exercised	-	\$ -		
Unvested Forfeited or expired	(610,510)	\$ 2.64		
Vested Forfeited or expired	(95,000)	\$ 4.75		
Outstanding at September 30, 2019	<u>4,373,566</u>	<u>\$ 2.15</u>	<u>8.25</u>	<u>\$ -</u>
Exercisable at September 30, 2019	<u>1,404,537</u>	<u>\$ 2.33</u>	<u>6.78</u>	<u>\$ -</u>

During the nine months ended September 30, 2019, the Company approved options to be issued pursuant to Reed's 2017 Incentive Compensation Plan to certain current employees totaling 1,231,000 shares. One half of these options vest annually over a four-year vesting period; the other half of these options will vest based on performance criteria to be established by the board. In addition, during the nine months ended September 30, 2019, the Company granted options to purchase 113,330 shares of common stock to new board members. Options granted to consultants, former

employees, and board members vest at various periods. On September 11, 2019, the Company granted options to purchase 60,510 shares of common stock to certain consultants, which were forfeited on the same day resulting in net \$0 of compensation expense.

The stock options are exercisable at a price ranging from \$2.33 to \$3.37 per share and expire in ten years. Total fair value of these options at grant date was approximately \$989, which was determined using the Black-Scholes-Merton option pricing model with the following average assumption: stock price ranging from \$2.33 to \$3.37 per share, expected term of seven years, volatility of 61%, dividend rate of 0% and risk-free interest rate ranging from 1.39% to 2.60%. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of measurement corresponding with the expected term of the share option award; the expected term represents the weighted-average period of time that share option awards granted are expected to be outstanding giving consideration to vesting schedules and historical participant exercise behavior; the expected volatility is based upon historical volatility of the Company's common stock; and the expected dividend yield is based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future.

The Company determined that the options had a fair value of \$989 which will be amortized in future periods through September 30, 2023. During the nine months ended September 30, 2019, the Company recognized \$1,077 of compensation expense relating to vested stock options. As of September 30, 2019, the amount of unvested compensation related to stock options was approximately \$2,672 which will be recorded as an expense in future periods as the options vest.

The aggregate intrinsic value was calculated as the difference between the closing market price as of September 30, 2019, which was \$1.30, and the exercise price of the outstanding stock options.

### Common stock purchase warrants

The following table summarizes warrant activity for the nine months ended September 30, 2019:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2018	6,897,277	\$ 2.06	2.42	\$ 1,447
Granted				
Exercised	(283,495)	\$ 2.09		
Forfeited or expired	(200,000)	\$ 5.60		
Outstanding at September 30, 2019	6,413,782	\$ 2.06	1.72	\$ 150
Exercisable at September 30, 2019	6,413,782	\$ 2.06	1.72	\$ 150

During the nine months ended September 30, 2019, warrants to acquire 283,495 shares of common stock were exercised, including 87,485 warrants that were exercised on a cashless basis, resulting in the issuance of 223,037 shares of common stock. Aggregate proceeds to the Company were \$365. In addition, during the nine months ended September 30, 2019, warrants to acquire 200,000 shares of common stock expired.

The intrinsic value was calculated as the difference between the closing market price as of September 30, 2019, which was \$1.30, and the exercise price of the Company's warrants to purchase common stock.

## 12. Contingencies

On December 31, 2018, the Company completed the sale of its Los Angeles manufacturing facility to California Custom Beverage, LLC ("CCB") an entity owned by Chris Reed, founder, Chief Innovation Officer, and board member. The sale included substantially all machinery, equipment, furniture and fixtures of the facility. By the terms of the sale CCB assumed the monthly payments on our lease obligation effective immediately upon closing of the sale. Our release from the obligation by the lessor, however, is dependent upon CCB's deposit of \$1.2 million of security with the lessor no later than December 31, 2019. In the three months period ending in March 31, 2019, Mr. Reed sold 246,000 shares valued at approximately \$656 that was deposited to the escrow account. In the three months period ending in June 30, 2019, Mr. Reed sold an additional 191,600 shares valued at approximately \$613. Mr. Reed currently has \$650 deposited to the escrow account with the remainder expected to be deposited by December 31, 2019 fully satisfying the security requirements. Mr. Reed has zero shares remaining in escrow as of September 30, 2019.

## 13. Subsequent Events

In October 2019, the Company conducted a public offering of 13,416,667 shares of its common shares including 1,750,000 shares sold pursuant to the underwriters' full exercise of their option to purchase additional shares to cover over-allotments, at a public offering price of \$0.60 per share. The net proceeds to the Company from this offering are \$7,536, after deducting underwriting discounts and commissions and other offering expenses. Proceeds from the offering will provide capital to fund the growth of our business, new products, sales and marketing efforts, working capital, and for general corporate purposes.

On October 18, 2019, the Company issued 4,254 preferred shares to its preferred shareholders as a result of its annual preferred stock dividend.

On October 30, 2019, Iris Snyder notified the Company of her intent to resign from her positions as Chief Financial Officer and Secretary, effective on November 22, 2019. On November 1, 2019, Reed's appointed Joann Tinnelly to serve as Interim Chief Financial Officer effective November 22, 2019.

On October 31, 2019, the Company entered into a Separation, Settlement and Release of Claims Agreement (the "Agreement") with Valentin Stalowir, its former Chief Executive Officer in connection with Mr. Stalowir's resignation from his position as Chief Executive Officer and the subsequent termination of his employment on October 31, 2019. As part of the Agreement, the Company issued Mr. Stalowir 392,002 shares of its common shares on October 31, 2019, as well as an additional 50,000 shares of its common shares on November 8, 2019.

On November 1, 2019, the Company issued a total of 12,239 shares of its common shares to the members of the board of directors.

On November 12, 2019, the Nasdaq Listing Qualifications Department ("Staff") notified the Company that the bid price of its common stock had closed at less than \$1 per share over the previous 30 consecutive business days, and, as a result, did not comply with Listing Rule 5550(a)(2). Therefore, in accordance with Listing Rule 5810(c)(3)(A), the Company is being provided 180 calendar days, or until May 11, 2020, to regain

compliance with the Rule. If, at any time before May 11, 2020 the bid price of the Company's common stock closes at \$1.00 per share or more for a minimum of 10 consecutive business days, Nasdaq staff will provide written notification that it has achieved compliance with the Bid Price Rule.

If the Company fails to regain compliance with the Bid Price Rule before May 11, 2020 but meets all of the other applicable standards for initial listing on the Nasdaq Capital Market with the exception of the minimum bid price, the Company may be eligible for additional time. To qualify, the Company will be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for The Nasdaq Capital Market, with the exception of the bid price requirement, and will need to provide written notice of its intention to cure the deficiency during the second compliance period, by effecting a reverse stock split, if necessary.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and the related notes appearing elsewhere in this report. This discussion and analysis may contain forward-looking statements based on assumptions about our future business.*

### Overview

The third quarter of 2019 continues to reflect the transformation efforts the Company implemented in 2017 and 2018. With the sale of the Los Angeles manufacturing facility on December 31, 2018, we began 2019 positioned as an asset-light company, with a significantly enhanced sales and marketing infrastructure capable of driving accelerated growth. The Company is better positioned to focus on driving growth and building its brands, with capital flexibility, a reduced need for capital expenditures, and an improved operating model.

Public equity offerings, which closed on February 20, 2019 and October 25, 2019, respectively, have provided the Company with funds to invest in additional sales support and marketing initiatives as well as working capital to drive brand awareness and support accelerated growth as the Company's expands its copacking capabilities and flexibility. Reed's first ever, fully integrated marketing campaign and accelerated new product innovation has driven incremental demand, and the company is now focused on broadening its supply chain capabilities to support the increased demand and improve fulfillment rates.

The Company continues to focus on increasing core brands' sales and improved gross margins through both pricing and COGS reduction. Reed's launched several new SKUs in the 3<sup>rd</sup> quarter of 2019 such as Reed's cans and Zero Sugar Reed's in both cans and bottles.

## Results of Operations – Three months ended September 30, 2019

The following table sets forth key statistics for the three months ended September 30, 2019 and 2018, respectively, in thousands.

	Three Months Ended September 30,		Pct. Change
	2019	2018	
Gross sales (A)	\$ 10,112	\$ 11,925	-15%
Less: Promotional and other allowances (B)	1,372	1,129	22%
Net sales	\$ 8,740	\$ 10,796	-19%
Cost of goods produced (C)	6,238	7,005	-11%
% of Gross sales	62 %	59 %	
% of Net sales	71 %	65 %	
Cost of goods sold – idle capacity (D)	-	1,110	-100%
% of Net sales	0 %	10 %	
Gross profit	\$ 2,502	\$ 2,681	-7%
% of Net sales	29 %	25 %	
<b>Expenses</b>			
Delivery and handling	\$ 1,902	\$ 1,395	36%
% of Net sales	22 %	13 %	
Dollar per case (\$)	3.5	2.3	
Selling and marketing	2,508	1,378	82%
% of Net sales	29 %	13 %	
General and administrative	2,470	1,987	24%
% of Net sales	28 %	18 %	
(Gain)/Loss on sales of assets	-	-	
Total Operating expenses	6,880	4,760	45%
Loss from operations	\$ (4,378)	\$ (2,079)	111%
Interest expense and other expense	\$ (187)	\$ (595)	-69%
<b>Net loss</b>	\$ (4,565)	\$ (2,674)	71%
<b>Loss per share – basic and diluted</b>	\$ (0.14)	\$ (0.10)	30%
Weighted average shares outstanding - basic & diluted	33,716,359	25,587,191	32%

(A) Gross sales are used internally by management as an indicator of and to monitor operating performance, including sales performance of particular products, salesperson performance, product growth or declines and overall Company performance. The use of gross sales allows evaluation of sales performance before the effect of any promotional items, which can mask certain performance issues. We therefore believe that the presentation of gross sales provides a useful measure of our operating performance. Gross sales are not a measure that is recognized under GAAP and should not be considered as an alternative to net sales, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of net sales. Additionally, gross sales may not be comparable to similarly titled measures used by other companies, as gross sales have been defined by our internal reporting practices. In addition, gross sales may not be realized in the form of cash receipts as promotional payments and allowances may be deducted from payments received from certain customers.

*(B) Although the expenditures described in this line item are determined in accordance with GAAP and meet GAAP requirements, the disclosure thereof does not conform to GAAP presentation requirements. Additionally, our definition of promotional and other allowances may not be comparable to similar items presented by other companies. Promotional and other allowances primarily include consideration given to the Company's distributors or retail customers including, but not limited to the following: (i) reimbursements given to the Company's distributors for agreed portions of their promotional spend with retailers, including slotting, shelf space allowances and other fees for both new and existing products; (ii) the Company's agreed share of fees given to distributors and/or directly to retailers for in-store marketing and promotional activities; (iii) the Company's agreed share of slotting, shelf space allowances and other fees given directly to retailers; (iv) incentives given to the Company's distributors and/or retailers for achieving or exceeding certain predetermined sales goals; and (v) discounted or free products. The presentation of promotional and other allowances facilitates an evaluation of their impact on the determination of net sales and the spending levels incurred or correlated with such sales. Promotional and other allowances constitute a material portion of our marketing activities. The Company's promotional allowance programs with its numerous distributors and/or retailers are executed through separate agreements in the ordinary course of business. These agreements generally provide for one or more of the arrangements described above and are of varying durations, ranging from one week to one year.*

*(C) Cost of goods produced: Cost of goods produced consists of the costs of raw materials and packaging utilized in the manufacture of products, co-packing fees, repacking fees, in-bound freight charges, inventory adjustments, as well as certain internal transfer costs. Cost of goods produced is used internally by management to measure the direct costs of goods sold, aside from unallocated plant costs. Cost of goods produced is not a measure that is recognized under GAAP and should not be considered as an alternative to cost of goods sold, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of cost of goods sold.*

*(D) Cost of goods sold – idle capacity: Cost of goods sold – idle capacity consists of direct production costs in excess of charges allocated to our finished goods in production. Plant costs in excess of production allocations are expensed in the period incurred rather than added to the cost of finished goods produced. Plant costs include labor costs, production supplies, repairs and maintenance, and inventory write-off. Our charges for labor and overhead allocated to our finished goods are determined on a market cost basis, which is lower than our actual costs incurred. Cost of goods sold – idle capacity is not a measure that is recognized under GAAP and should not be considered as an alternative to cost of goods sold, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of cost of goods sold.*

## Sales, Cost of Sales, and Gross Margins

The following chart sets forth key statistics for the transition of the Company's top line activity from the third quarter of 2018 through the third quarter of 2019.

	2019						2018				Q3 Per Case			Sept YTD			
	Q1	Q2	Q3	YTD	Q3 vs PY	YTD vs PY	Q1	Q2	Q3	YTD	2019	2018	vs PY	2019	2018	vs PY	
<b>Cases:</b>																	
Reed's	235	278	237	750	-5%	-2%	256	260	250	766							
Virgil's	253	282	298	834	22%	29%	173	231	244	648							
Total Core	488	560	535	1,584	8%	12%	429	491	494	1,414							
Non Core	15	2	4	21	-97%	-89%	31	51	104	186							
Candy	9	9	6	24	-34%	-18%	11	9	9	29							
<b>Total</b>	<b>512</b>	<b>572</b>	<b>545</b>	<b>1,628</b>	<b>-10%</b>	<b>0%</b>	<b>471</b>	<b>551</b>	<b>607</b>	<b>1,629</b>							
<b>Gross Sales:</b>																	
Core	\$ 9,098	\$ 10,436	\$ 9,832	\$ 29,365	5%	11%	\$ 7,917	\$ 9,241	\$ 9,375	\$ 26,533	\$ 18.4	\$ 19.0	-3%	\$ 18.5	\$ 18.8	-1%	
Non Core	181	49	109	339	-95%	-91%	609	878	2,270	3,757	30.7	21.8	40%	16.2	20.2	-20%	
Candy	241	274	172	686	-39%	-19%	329	242	280	851	28.8	31.1	-8%	28.8	29.3	-2%	
<b>Total</b>	<b>\$ 9,520</b>	<b>\$ 10,758</b>	<b>\$ 10,112</b>	<b>\$ 30,391</b>	<b>-15%</b>	<b>-2%</b>	<b>\$ 8,855</b>	<b>\$ 10,361</b>	<b>\$ 11,925</b>	<b>\$ 31,141</b>	<b>\$ 18.6</b>	<b>\$ 19.6</b>	<b>-5%</b>	<b>18.7</b>	<b>19.1</b>	<b>-2%</b>	
<b>Discounts:</b>																	
<b>Total</b>	<b>\$ (1,071)</b>	<b>\$ (1,278)</b>	<b>\$ (1,372)</b>	<b>\$ (3,721)</b>	<b>22%</b>	<b>39%</b>	<b>\$ (567)</b>	<b>\$ (972)</b>	<b>\$ (1,129)</b>	<b>\$ (2,668)</b>	<b>\$ (2.5)</b>	<b>\$ (1.9)</b>	<b>35%</b>	<b>\$ (2.3)</b>	<b>\$ (1.6)</b>	<b>40%</b>	
<b>COGS:</b>																	
Core	\$ (5,469)	\$ (6,843)	\$ (6,098)	\$ (18,410)	16%	23%	\$ (4,586)	\$ (5,067)	\$ (5,260)	\$ (14,913)	\$ (11.4)	\$ (10.6)	7%	\$ (11.6)	\$ (10.5)	10%	
Non Core	(167)	(28)	(34)	(229)	-98%	-92%	(524)	(735)	(1,555)	(2,814)	(9.6)	(15.0)	-36%	(10.9)	(15.1)	-28%	
Candy	(159)	(177)	(106)	(442)	-44%	-18%	(199)	(153)	(190)	(542)	(17.7)	(21.1)	-16%	(18.6)	(18.7)	-1%	
Idle Plant	(150)	(159)	0	(309)	-100%	-86%	(676)	(392)	(1,110)	(2,178)	-	(1.8)	-100%	(0.2)	(1.3)	-86%	
<b>Total</b>	<b>\$ (5,945)</b>	<b>\$ (7,207)</b>	<b>\$ (6,238)</b>	<b>\$ (19,390)</b>	<b>-23%</b>	<b>-5%</b>	<b>\$ (5,985)</b>	<b>\$ (6,347)</b>	<b>\$ (8,115)</b>	<b>\$ (20,447)</b>	<b>\$ (11.5)</b>	<b>\$ (13.4)</b>	<b>-15%</b>	<b>\$ (11.9)</b>	<b>\$ (12.6)</b>	<b>-6%</b>	
<b>Gross Margin:</b>	<b>\$ 2,504</b>	<b>\$ 2,273</b>	<b>\$ 2,502</b>	<b>\$ 7,280</b>	<b>-7%</b>	<b>-9%</b>	<b>\$ 2,303</b>	<b>\$ 3,042</b>	<b>\$ 2,681</b>	<b>\$ 8,026</b>	<b>\$ 4.6</b>	<b>\$ 4.4</b>	<b>4%</b>	<b>\$ 4.5</b>	<b>\$ 4.9</b>	<b>-9%</b>	
<b>as % Net Sales</b>	<b>30%</b>	<b>24%</b>	<b>29%</b>	<b>27%</b>			<b>28%</b>	<b>32%</b>	<b>25%</b>	<b>28%</b>							

As part of the Company's ongoing initiative to simplify and streamline operations by focusing on the appropriate number of SKUs, the Company has identified core products to place its strategic focus on. These core products consist of Reed's and Virgil's branded beverages. Non-core products consist primarily of slower selling discontinued Reed's and Virgil's SKUs, discontinued brands such as China Cola and Sonoma Sparklers, as well private label SKUs which were sold to California Custom Beverage as part of the plant sale on Dec 31, 2018.

### Sales

As a result of our decision to focus on the core Reed's and Virgil's beverage brands and simplify operations by reducing the overall number of SKUs that we offer, the Company's core beverage volume for the quarter ended September 30, 2019 represents almost 100% of all beverage volume.

Core brand gross revenue increased 5% during the current quarter as compared to the year ago quarter, from \$9,375 to \$9,832, driven by Virgil's volume growth of 22%, offset by Reed's volume decline of 5%. This increase was reduced by lapping \$2,270 of discontinued and private label sales which are no longer part of our portfolio. Candy gross sales declined by 39% to \$172 from \$280 last year. The result is a decrease of total gross revenue of 15%, to \$10,112 from \$11,925 during the year ago period. Our sales in Q3 were suppressed as we short shipped orders in hand by approximately \$1,200 due to unavailability of product related to the second quarter production issues.

On a 12-ounce case basis, price on our core brands decreased \$0.60 per 12-ounce case or 3% year over year, while core volume grew 8% vs the year-ago quarter. Price per case decline is a result of brand mix shifting from glass to cans and the lower pricing associated with such brand mix.

Discounts as a percentage of gross sales increased to 14% in the third quarter of 2019 from 9% in the prior year period. The increase in our promotions was due to the activation of new promotions for our existing Reed's and Virgil's SKUs as well as the incremental promotional and slotting spend related to product introduction of our innovative SKUs such as Reed's Zero sugar bottles and cans and Reed's cans. As a result, total net sales decreased 19% in the third quarter of 2019 to \$8,740, compared to \$10,796 in the same period in 2018.

### Cost of Goods Sold and Produced

Cost of goods sold decreased \$1,877 during the third quarter of 2019 as compared to the year-ago quarter. As a percentage of net sales, cost of goods sold decreased 4 percentage points in the third quarter of 2019, to 71% from 75% in the year-ago period. The decrease in cost of goods sold was largely driven by idle capacity reduced to \$0, down from \$1,110 in the prior year period. We do not anticipate any more idle plant costs now that we have exited the Los Angeles facility.

Total cost of goods per case decreased to \$11.5 per case in the third quarter of 2019 from \$13.4 per case in the third quarter of 2018. Cost of goods sold per case on core brands increased to \$11.4 during the third quarter of 2019 from \$10.6 per case during the third quarter of 2018 driven by brand mix. We are continuing to work with suppliers and co-packers to improve our processes and maximize cost efficiencies as the company's new product offerings continue to grow and scale.

### Gross Margin

The cost of goods reduction resulted in a 4-percentage point increase in gross margin in the third quarter of 2019, to 29% compared to 25% in same quarter of 2018.

## **Operating Expenses**

### *Delivery and Handling Expenses*

Delivery and handling expenses consist of delivery costs to customers and warehousing costs incurred for handling our finished goods after production. Delivery and handling expenses increased by \$507 in the third quarter of 2019 to \$1,902 from \$1,395 in the same period in 2018. The increase in the rate per case to \$3.5 per case this quarter from \$2.3 per case in the prior year period is driven by additional freight required to rebalance inventory at the needed warehouse locations, shipping innovation products produced in limited locations and higher than expected LTL (less than truck load) shipments to support of the launch of new retail accounts. As we work to expand our copacker footprint and capabilities later this year, we anticipate transportation costs to reduce.

### *Selling and Marketing Expenses*

Marketing expenses consist of direct marketing, marketing labor and marketing support costs. Selling expenses consist of all other selling-related expenses including personnel and contractor support.

Total selling and marketing expenses were \$2,508 during the third quarter of 2019, compared to \$1,378 during the year-ago period. As a percentage of net sales, selling and marketing costs increased to 29% during the three months ended September 30, 2019, as compared to 13% during the same period of the prior year. The increased investment in sales and marketing is consistent with the Company's strategy to refresh the brands, increase brand awareness, launch new products into the market, open new doors of distribution, create new pull campaigns to increase core brands sales velocity and lay the groundwork to re-accelerate growth of the core brands. The increase is due to additional personnel and broker selling network, integrated marketing campaign creative and production, several media buys and innovation development (product, research, and packaging).

### *General and Administrative Expenses*

General and administrative expenses consist primarily of the cost of executive, administrative, and finance personnel, as well as professional fees. General and administrative expenses increased in the third quarter of 2019 to \$2,470 from \$1,987, an increase of \$483 over the same period in 2018. Our general and administrative expense increase was largely driven by \$643 of severance accruals with regards to the recent management changes announced on September 30, 2019.

## **Loss from Operations**

The loss from operations was \$4,378 for the three months ended September 30, 2019, as compared to a loss of \$2,079 in the same period of 2018 driven by our investment in sales and marketing initiatives, an increase in delivery and handling, as well as an increase in general and administrative costs.

## **Interest and Other Expense**

Interest and other expense for the three months ended September 30, 2019 consisted of \$318 of interest expense as well as the expense related to the change in fair value of our warrant liability of \$131. During the same period of 2018, interest expense was \$621, and expense related to the change in fair value of our warrant liability was \$26. The decrease in interest expense is the result of lower rates on our revolving line of credit.

## **Modified EBITDA**

In addition to our GAAP results, we present Modified EBITDA as a supplemental measure of our performance. However, Modified EBITDA is not a recognized measurement under GAAP and should not be considered as an alternative to net income, income from operations or any other performance measure derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of liquidity. We define Modified EBITDA as net income (loss), plus interest expense, depreciation and amortization, stock-based compensation, changes in fair value of warrant expense, and one-time restructuring-related costs including employee severance and asset impairment.

Management considers our core operating performance to be that which our managers can affect in any particular period through their management of the resources that affect our underlying revenue and profit generating operations during that period. Non-GAAP adjustments to our results prepared in accordance with GAAP are itemized below. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Modified EBITDA, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of Modified EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

Set forth below is a reconciliation of net loss to Modified EBITDA for the three months ended September 30, 2019 and 2018 (unaudited; in thousands):

	<b>Three Months Ended September 30</b>	
	<b>2019</b>	<b>2018</b>
Net loss	\$ (4,565)	\$ (2,674)
Modified EBITDA adjustments:		
Depreciation and amortization	38	155
Interest expense	318	621
Stock option and other noncash compensation	368	443
Change in fair value of warrant liability	(131)	(26)
Severance	643	-
Total EBITDA adjustments	<u>\$ 1,236</u>	<u>\$ 1,193</u>
Modified EBITDA	<u>\$ (3,329)</u>	<u>\$ (1,481)</u>

We present Modified EBITDA because we believe it assists investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use Modified EBITDA in developing our internal budgets, forecasts and strategic plan; in analyzing the effectiveness of our business strategies in evaluating potential acquisitions; making compensation decisions; and in communications with our board of directors concerning our financial performance. Modified EBITDA has limitations as an analytical tool, which includes, among others, the following:

- Modified EBITDA does not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;
- Modified EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Modified EBITDA does not reflect future interest expense, or the cash requirements necessary to service interest or principal payments, on our debts; and
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Modified EBITDA does not reflect any cash requirements for such replacements.

## Results of Operations – Nine months ended September 30, 2019

The following table sets forth key statistics for the nine months ended September 30, 2019 and 2018, respectively, in thousands.

	Nine months Ended September 30, 2019		Pct. Change
	2019	2018	
Gross sales (A)	\$ 30,391	\$ 31,141	-2%
Less: Promotional and other allowances (B)	3,721	2,668	39%
Net sales	\$ 26,669	\$ 28,473	-6%
Cost of goods produced (C)	19,081	18,269	4%
% of Gross sales	63 %	59 %	
% of Net sales	72 %	64 %	
Cost of goods sold – idle capacity (D)	309	2,178	-86%
% of Net sales	1 %	8 %	
Gross profit	\$ 7,279	\$ 8,026	9%
% of Net sales	27 %	28 %	
<b>Expenses</b>			
Delivery and handling	\$ 4,369	\$ 3,598	21%
% of Net sales	16 %	13 %	
Dollar per case (\$)	2.7	2.2	
Selling and marketing	7,718	3,601	114%
% of Net sales	29 %	13 %	
General and administrative	6,587	6,853	-4%
% of Net sales	25 %	24 %	
(Gain)/Loss on sales of assets	(30)	-	
Total Operating expenses	18,644	14,052	33%
Loss from operations	\$ (11,365)	\$ (6,026)	89%
Interest expense and other expense	\$ (924)	\$ (1,639)	-44%
<b>Net loss</b>	\$ (12,289)	\$ (7,665)	60%
<b>Loss per share – basic and diluted</b>	\$ (0.38)	\$ (0.30)	26%
Weighted average shares outstanding - basic & diluted	32,179,119	25,242,780	27%

(A) Gross sales are used internally by management as an indicator of and to monitor operating performance, including sales performance of particular products, salesperson performance, product growth or declines and overall Company performance. The use of gross sales allows evaluation of sales performance before the effect of any promotional items, which can mask certain performance issues. We therefore believe that the presentation of gross sales provides a useful measure of our operating performance. Gross sales are not a measure that is recognized under GAAP and should not be considered as an alternative to net sales, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of net sales. Additionally, gross sales may not be comparable to similarly titled measures used by other companies, as gross sales have been defined by our internal reporting practices. In addition, gross sales may not be realized in the form of cash receipts as promotional payments and allowances may be deducted from payments received from certain customers.

*(B) Although the expenditures described in this line item are determined in accordance with GAAP and meet GAAP requirements, the disclosure thereof does not conform to GAAP presentation requirements. Additionally, our definition of promotional and other allowances may not be comparable to similar items presented by other companies. Promotional and other allowances primarily include consideration given to the Company's distributors or retail customers including, but not limited to the following: (i) reimbursements given to the Company's distributors for agreed portions of their promotional spend with retailers, including slotting, shelf space allowances and other fees for both new and existing products; (ii) the Company's agreed share of fees given to distributors and/or directly to retailers for in-store marketing and promotional activities; (iii) the Company's agreed share of slotting, shelf space allowances and other fees given directly to retailers; (iv) incentives given to the Company's distributors and/or retailers for achieving or exceeding certain predetermined sales goals; and (v) discounted or free products. The presentation of promotional and other allowances facilitates an evaluation of their impact on the determination of net sales and the spending levels incurred or correlated with such sales. Promotional and other allowances constitute a material portion of our marketing activities. The Company's promotional allowance programs with its numerous distributors and/or retailers are executed through separate agreements in the ordinary course of business. These agreements generally provide for one or more of the arrangements described above and are of varying durations, ranging from one week to one year.*

*(C) Cost of goods produced: Cost of goods produced consists of the costs of raw materials and packaging utilized in the manufacture of products, co-packing fees, repacking fees, in-bound freight charges, inventory adjustments, as well as certain internal transfer costs. Cost of goods produced is used internally by management to measure the direct costs of goods sold, aside from unallocated plant costs. Cost of goods produced is not a measure that is recognized under GAAP and should not be considered as an alternative to cost of goods sold, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of cost of goods sold.*

*(D) Cost of goods sold – idle capacity: Cost of goods sold – idle capacity consists of direct production costs in excess of charges allocated to our finished goods in production. Plant costs in excess of production allocations are expensed in the period incurred rather than added to the cost of finished goods produced. Plant costs include labor costs, production supplies, repairs and maintenance, and inventory write-off. Our charges for labor and overhead allocated to our finished goods are determined on a market cost basis, which is lower than our actual costs incurred. Cost of goods sold – idle capacity is not a measure that is recognized under GAAP and should not be considered as an alternative to cost of goods sold, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of cost of goods sold.*

### **Sales, Cost of Sales, and Gross Margins**

The following chart sets forth key statistics for the transition of the Company's top line activity from the nine-month period ending September 30, 2018 through the nine-month period ending September 30, 2019.

As part of the Company's ongoing initiative to simplify and streamline operations by reducing the number of SKUs, the Company has identified core products to place its strategic focus on. These core products consist of Reed's and Virgil's branded beverages. Non-core products consist primarily of slower selling discontinued Reed's and Virgil's SKUs, discontinued brands such as China Cola and Sonoma Sparklers, as well private label SKUs which were sold to California Custom Beverage as part of the plant sale on Dec 31, 2018.

#### *Sales*

As a result of our decision to focus on the core Reed's and Virgil's beverage brands and simplify operations by reducing the overall number of SKUs that we offer, the Company's core beverage volume for the nine months ended September 30, 2019 represents 97% of all beverage volume.

Core brand gross revenue increased 11% during the nine months ended September 30, 2019 as compared to the nine months ended September 30, 2018, from \$26,533 to \$29,365, driven by Virgil's volume growth of 29%. This increase was reduced by lapping \$3,757 of discontinued and private label sales which are no longer part of our portfolio. The result is a decrease of total gross revenue of 2%, to \$30,391 from \$31,141 during the year ago period. Our gross sales were impacted as we short shipped approximately \$2,300 of orders to customers during the nine months ended September 30, 2019 due to unavailability of product related to lower than expected co-packer production and innovation production delays.

On a 12-ounce case basis, price on our core brands decreased \$0.30 per 12-ounce case or 1% year over year, while core volume grew 12% vs the year-ago period.

Discounts as a percentage of gross sales increased to 12% in the nine months ended September 30, 2019 from 9% in the prior year period. The increase in our promotions was due to the activation of new promotions for our existing Reed's and Virgil's SKUs as well as the incremental promotional and slotting spend related to product introduction of our innovation SKUs such as Reed's Zero sugar bottles and cans and Reed's cans. As a result, net sales revenue decreased 6% in the nine months ended September 30, 2019 to \$26,669, compared to \$28,473 in the same period in 2018.

### *Cost of Goods Sold and Produced*

Cost of goods sold decreased \$1,057 during the nine months ended September 30, 2019 as compared to the year-ago period. As a percentage of net sales, cost of goods sold increased 1 percentage point during the nine months ended September 30, 2019, to 73% from 72% in the year-ago period. Idle and other costs were reduced to \$309, down from \$2,178 in the prior year period. The plant sale has significantly reduced our idle costs, while the remaining other costs were related to completing the transition of the plant to California Custom Beverages. We do not anticipate idle charges to be incurred going forward. The increase in cost of goods sold was driven by an increase in inventory obsolescence reserves and write offs of related to our rebranding efforts and formulation enhancements, mostly offset by the reduction in idle costs.

Idle and other costs were reduced to \$309, down from \$2,178 in the prior year period. The plant sale has significantly reduced our idle costs, while the remaining other costs were related to completing the transition of the plant to California Custom Beverages. We do not anticipate any more idle plant costs now that we have exited the Los Angeles facility.

Total cost of goods per case decreased to \$11.9 per case in the nine months ended September 30, 2019 from \$12.6 per case during the same period in 2018 driven by increased efficiencies having exited the Los Angeles facility. We are continuing to work with suppliers and co-packers to improve our processes and maximize cost efficiencies as the company's new product offerings continue to grow and scale.

### *Gross Margin*

The impact of the increase in inventory obsolescence reserves and write offs resulted in a reduction in gross margin in the nine months ended September 30, 2019, to 27% compared to 28% in same period of 2018.

### **Operating Expenses**

#### *Delivery and Handling Expenses*

Delivery and handling expenses consist of delivery costs to customers and warehousing costs incurred for handling our finished goods after production. Delivery and handling expenses increased by \$771 in the nine months ended September 30, 2019 to \$4,369 from \$3,598 in the same period in 2018 driven by increased volumes. The increase in the rate per case to \$2.7 per case this period from \$2.2 per case in the prior year period is driven by additional freight required to rebalance inventory at the needed warehouse locations, shipping innovation products produced in limited locations and higher than expected less than truck load shipments to support of the launch of new retail accounts. As we work to expand our copacker footprint and capabilities later this year, we anticipate transportation costs to reduce.

#### *Selling and Marketing Expenses*

Marketing expenses consist of direct marketing, marketing labor and marketing support costs. Selling expenses consist of all other selling-related expenses including personnel and contractor support.

Total selling and marketing expenses were \$7,718 during the nine months ended September 30, 2019, compared to \$3,601 during the year-ago period. As a percentage of net sales, selling and marketing costs increased to 29% during the nine months ended September 30, 2019, as compared to 13% of net revenue during the same period of the prior year. The increased investment in sales and marketing is consistent with the Company's strategy to refresh the brands, launch new products into the market, open new doors of distribution, create new communication campaigns to increase core brands sales velocity and lay the groundwork to re-accelerate growth of the core brands. The increase is due to additional personnel and broker selling network, integrated marketing campaign creative and production, and innovation development (product, research, and packaging).

#### *General and Administrative Expenses*

General and administrative expenses consist primarily of the cost of executive, administrative, and finance personnel, as well as professional fees. General and administrative expenses decreased in the nine months ended September 30, 2019 from \$6,853 to \$6,587, a decrease of \$266 over the same period in 2018. Our general and administrative expense decrease was largely driven by the exit of the Los Angeles facility and reduction of office expenses, leases, and utilities.

### **Loss from Operations**

The loss from operations was \$11,365 for the nine months ended September 30, 2019, as compared to a loss of \$6,026 in the same period of 2018 driven by increase investment in sales and marketing initiatives as well as delivery and handling expenses.

### **Interest and Other Expense**

Interest and other expense for the nine months ended September 30, 2019 consisted of \$947 of interest expense as well as the expense related to the change in fair value of our warrant liability of \$23. During the same period of 2018, interest expense was \$1,542, and expense related to the change in fair value of our warrant liability was \$97. The decrease in interest expense is the result of lower borrowings as well as lower rates on our revolving line of credit.

### **Modified EBITDA**

In addition to our GAAP results, we present Modified EBITDA as a supplemental measure of our performance. However, Modified EBITDA is not a recognized measurement under GAAP and should not be considered as an alternative to net income, income from operations or any other

performance measure derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of liquidity. We define Modified EBITDA as net income (loss), plus interest expense, depreciation and amortization, stock-based compensation, changes in fair value of warrant expense, and one-time restructuring-related costs including employee severance and asset impairment.

Management considers our core operating performance to be that which our managers can affect in any particular period through their management of the resources that affect our underlying revenue and profit generating operations during that period. Non-GAAP adjustments to our results prepared in accordance with GAAP are itemized below. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Modified EBITDA, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of Modified EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

Set forth below is a reconciliation of net loss to Modified EBITDA for the nine months ended September 30, 2019 and 2018 (unaudited; in thousands):

	<b>Nine months Ended September 30</b>	
	<b>2019</b>	<b>2018</b>
Net loss	\$ (12,289)	\$ (7,665)
<b>Modified EBITDA adjustments:</b>		
Depreciation and amortization	108	492
Interest expense	947	1,542
Stock option and other noncash compensation	1,597	1,619
Change in fair value of warrant liability	(23)	97
Severance	682	642
Total EBITDA adjustments	<u>\$ 3,311</u>	<u>\$ 4,392</u>
Modified EBITDA	<u>\$ (8,978)</u>	<u>\$ (3,273)</u>

We present Modified EBITDA because we believe it assists investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use Modified EBITDA in developing our internal budgets, forecasts and strategic plan; in analyzing the effectiveness of our business strategies in evaluating potential acquisitions; making compensation decisions; and in communications with our board of directors concerning our financial performance. Modified EBITDA has limitations as an analytical tool, which includes, among others, the following:

- Modified EBITDA does not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;
- Modified EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Modified EBITDA does not reflect future interest expense, or the cash requirements necessary to service interest or principal payments, on our debts; and
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Modified EBITDA does not reflect any cash requirements for such replacements.

### **Liquidity and Capital Resources**

The accompanying financial statements have been prepared under the assumption that the Company will continue as a going concern. Such assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business.

For the nine months ended September 30, 2019, the Company recorded a net loss of \$12,289 and used cash in operations of \$14,628. For the three months ended September 30, 2019, the Company used cash in operations of \$3,108. As of September 30, 2019, we had a cash balance of \$1,016 with borrowing capacity of \$1,019, a stockholders' deficit of \$2,208 and a working capital of \$1,394 compared to a cash balance of \$624 stockholders' deficit of \$6,743 and working capital shortfall of \$3,297 at September 30, 2018. On February 20, 2019, the Company conducted a public offering of 7,733,750 shares of its common stock at \$2.10 per share resulting to net proceeds to the Company of \$14,867. In October 2019, the Company conducted a public offering of 13,416,667 shares of its common stock at \$0.60 per share resulting in net proceeds to the Company of \$7,536.

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. We have taken decisive action to improve our margins, including fully outsourcing our manufacturing process, streamlining our product portfolio, negotiating improved vendor contracts and restructuring our selling prices.

## **Critical Accounting Policies and Estimates**

The Company recognizes revenue in accordance with ASU 2014-09, Revenue from Contracts with Customers (Topic 606), (“ASC 606”). The underlying principle of ASC 606 is to recognize revenue to depict the transfer of goods or services to customers at the amount expected to be collected. ASC 606 creates a five-step model that requires entities to exercise judgment when considering the terms of contract(s), which include (1) identifying the contract or agreement with a customer, (2) identifying our performance obligations in the contract or agreement, (3) determining the transaction price, (4) allocating the transaction price to the separate performance obligations, and (5) recognizing revenue as each performance obligation is satisfied.

The Company does not have any significant contracts with customers requiring performance beyond delivery, and contracts with customers contain no incentives or discounts that could cause revenue to be allocated or adjusted over time. Shipping and handling activities are performed before the customer obtains control of the goods and therefore represent a fulfillment activity rather than a promised service to the customer. Revenue and costs of sales are recognized when control of the products transfers to our customer, which generally occurs upon shipment from our facilities. The Company’s performance obligations are satisfied at that time.

All of the Company’s products are offered for sale as finished goods only, and there are no performance obligations required post-shipment for customers to derive the expected value from them.

The Company does not allow for returns, except for damaged products when the damage occurred pre-fulfillment. Damaged product returns have historically been insignificant. Because of this, the stand-alone nature of our products, and our assessment of performance obligations and transaction pricing for our sales contracts, we do not currently maintain a contract asset or liability balance for obligations. We assess our contracts and the reasonableness of our conclusions on a quarterly basis.

## **Recent Accounting Pronouncements**

See Note 2 of the Notes to Condensed Financial Statements for a discussion of recent accounting pronouncements.

## **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

A smaller reporting company is not required to provide the information required by this Item.

## **Item 4. Controls and Procedures.**

### *Evaluation of Disclosure Controls and Procedures*

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Securities and Exchange Act of 1934 Rules 13a-15 (f). Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that the Company’s disclosure controls and procedures were effective as of September 30, 2019.

### *Changes in Internal Control Over Financial Reporting*

There have been no changes in the Company’s internal control over financial reporting during the three months ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings

We are subject to various legal proceedings from time to time in the ordinary course of business, none of which are required to be disclosed under this Item 1.

#### Item 1A. Risk Factors

Except as set forth below, there have been no material changes to our risk factors as previously disclosed in “Risk Factors” in Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2018 (“Risk Factors”). Readers should carefully consider these Risk Factors, which could materially affect our business, financial condition or future results. These Risk Factors are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

*We have been notified by NASDAQ that the bid price of our common stock has closed at less than \$1 per share over the previous 30 consecutive business days, and, as a result, does not comply with Listing Rule 5550(a)(2). If we are unable to cure the failure within the prescribed time period, our common stock will be subject to delisting. A delisting would materially reduce the liquidity of our common stock and have an adverse effect on our market price.*

The Nasdaq Listing Qualifications Department (“Staff”) notified us on November 12, 2019 that the bid price of our common stock had closed at less than \$1 per share over the previous 30 consecutive business days, and, as a result, did not comply with Listing Rule 5550(a)(2). Therefore, in accordance with Listing Rule 5810(c)(3)(A), we are being provided 180 calendar days, or until May 11, 2020, to regain compliance with the Rule. If, at any time before May 11, 2020 the bid price of the Company’s common stock closes at \$1.00 per share or more for a minimum of 10 consecutive business days, Nasdaq staff will provide written notification that it has achieved compliance with the Bid Price Rule.

If the Company fails to regain compliance with the Bid Price Rule before May 11, 2020 but meets all of the other applicable standards for initial listing on the Nasdaq Capital Market with the exception of the minimum bid price, the Company may be eligible for additional time. To qualify, the Company will be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for The Nasdaq Capital Market, with the exception of the bid price requirement, and will need to provide written notice of its intention to cure the deficiency during the second compliance period, by effecting a reverse stock split, if necessary.

A delisting would materially reduce the liquidity of our common stock and have an adverse effect on our market price. A delisting would also likely make it more difficult for us to obtain financing through the sale of our equity. Any such sale of equity would likely be more dilutive to our current stockholders than would be the case if our shares were listed.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

### Item 3. Defaults Upon Senior Securities

None.

### Item 4. Mine Safety Disclosures

Not applicable.

### Item 5. Other Information

None.

### Item 6. Exhibits

Exhibit No.	Description
10.1	<a href="#"><u>Amendment No. 1 to Employment Agreement by and between Reed’s Inc. and Valentin Stalowir dated September 29, 2019*<sup>^</sup></u></a>
10.2	<a href="#"><u>Employment Agreement by and between Reed’s Inc. and Norman Snyder dated September 30, 2019*<sup>^</sup></u></a>
10.3	<a href="#"><u>Manufacturing and Distribution Agreement by and between Reed’s Inc. and B C Marketing Concepts Inc., dba Full Sail Brewing Company dated October 11, 2019*</u></a>
10.4	<a href="#"><u>Recipe Development Agreement Reed’s Inc. and B C Marketing Concepts Inc., dba Full Sail Brewing Company dated October 11, 2019*</u></a>
10.5	<a href="#"><u>Separation, Settlement and Release of Claims Agreement between Reed’s Inc. and Valentin Stalowir dated October 31, 2019*<sup>^</sup></u></a>

31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\\*](#)

31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\\*](#)

32.1 [Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\\*](#)

32.2 [Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\\*](#)

101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*

\*filed herewith

^ compensatory plan or arrangement

In accordance with SEC Release 33-8238, Exhibits 32.1 and 32.2 are being furnished and not filed.

Furnished herewith, XBRL (Extensive Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.

**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 thereunto duly authorized.

Reed's, Inc.  
(Registrant)

Date: November 13, 2019

*/s/ John Bello*

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John Bello  
Interim Chief Executive Officer  
(Principal Executive Officer)

Date: November 13, 2019

*/s/ Iris Snyder*

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Iris Snyder  
Chief Financial Officer  
(Principal Financial Officer)

## Section 2: EX-10.1

### Amendment No. 1 to Employment Agreement

This Amendment No. 1 (“Amendment”) to that certain Employment Agreement dated June 28, 2017 (“Employment Agreement”) by and between Reed’s Inc., a Delaware corporation (the “Company”) and Valentin Stalowir (the “Executive”) is made and effective as of September 29, 2019. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Employment Agreement.

**WHEREAS**, Executive has resigned from the offices of Chief Executive Officer and President of the Company and from the position of director serving on the board of directors of the Company;

**WHEREAS**, the parties are negotiating a separation agreement to modify the remuneration provisions of Section 7 of the Employment Agreement, in good faith and for the mutual benefit of the parties (“Separation Agreement”);

**WHEREAS**, Executive has agreed to continue as an employee of the Company through the earlier of (i) the effective date of the Separation Agreement, and (ii) October 31, 2019 (“Separation Date”) in order assist with the transition of his duties to the newly appointed Chief Executive Officer;

**WHEREAS**, that certain Restricted Stock award comprised of 392,000 shares of common stock of the Company (“Award”) granted to Executive by the Company pursuant to the Employment Agreement is scheduled to vest on September 30, 2019;

**WHEREAS**, Executive is the holder of certain incentive stock option awards (“ISOs”) granted to Executive pursuant to the Employment Agreement under the Company’s 2017 Incentive Compensation Plan;

**WHEREAS**, as of the Separation Date 461,504 of the ISOs will have vested and certain of the additional ISOs will vest pursuant to an acceleration clause in the Employment Agreement (“Vested ISOs”);

**WHEREAS**, the parties desire to extend the vesting date of the Award and the provisions of the Employment Agreement in its entirety through the Separation Date; and

**WHEREAS**, the parties desire that the Vested ISOs be treated as nonqualified stock options as of Separation Date, exercisable through the expiration date of the applicable Vested ISO.

**NOW THEREFORE**, the parties agree as follows:

1. Executive will continue as an employee of the Company through the Separation Date in order to assist with the transition of his duties to the newly appointed Chief Executive Officer.
  2. The vesting date of the Award is, and, notwithstanding Executive’s resignation, the terms of the Employment Agreement in their entirety are, extended to the Separation Date.
  3. The Vested ISOs will automatically and without further action on the part of either party convert into nonqualified stock options as of Separation Date, exercisable through the expiration date of the applicable Vested ISO.
  4. All the terms of this Employment Agreement not specifically changed by this Amendment will remain in full force and effect through the Separation Date.
  5. This Amendment may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.
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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

**COMPANY**

**REED'S, INC.,**  
a Delaware corporation

By: /s/ Iris Snyder  
Name: Iris Snyder  
Title: Chief Financial Officer

**EXECUTIVE**

By: /s/ Valentin Stalowir  
Name: Valentin Stalowir

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## Section 3: EX-10.2

### EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is made and effective as of September 30, 2019 (the “Effective Date”) by and between Reed’s, Inc., a Delaware corporation (“Reed’s” or the “Company”), and Norman E. Snyder (the “Executive”).

WHEREAS, Reed’s and the Executive desire to enter into this Agreement to evidence the terms and conditions of the employment of the Executive by Reed’s.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual provisions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Employment. Reed’s hereby employs the Executive and the Executive hereby accepts such employment, in accordance with the terms and conditions set forth in this Agreement. By executing this Agreement, Executive represents and warrants to Reed’s that (i) the Executive is entering into this Agreement voluntarily and that his employment hereunder and compliance with the terms and conditions hereof will not conflict with or result in the breach by him of any agreement to which he is a party or by which he may be bound; (ii) the Executive has not violated, and in connection with his employment with Reed’s will not violate, any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer by which he is bound; and (iii) in connection with his employment with Reed’s, the Executive will not use any confidential or proprietary information he may have obtained in connection with employment with any prior employer.

Section 2 Term. The Executive’s employment (the “Term”) with Reed’s under this Agreement will commence on the Effective Date and continue until terminated in accordance with Section 6 below. Executive’s employment with the Company shall be on an “at-will” basis.

Section 3 Position. The Executive will be employed as the Chief Operating Officer (“COO”) of Reed’s and will report to the Chief Executive Officer. The Executive will have the duties and responsibilities customarily attendant to the position of COO. Executive will also have such other duties and responsibilities that are commensurate with his position as specifically delegated to him from time to time by the Chief Executive Officer. Executive shall be subject to the Bylaws, policies, practices, procedures and rules of the Company, currently existing and as may be modified from time to time, including those policies and procedures set forth in the Company’s Code of Conduct and Ethics. Executive’s principal office, and principal place of employment, shall be at the Company’s offices, currently in Norwalk, Connecticut, provided that Executive may be required under business circumstances to travel outside the location of his principal employment in connection with performing his or her duties under this Agreement.

#### Section 4 Restrictive Covenants; Representations.

4.1 Loyal Performance. During the Executive’s employment with Reed’s, the Executive will devote his full business time and attention to the performance of his duties as COO and will perform his duties and carry out his responsibilities as COO in a diligent and businesslike manner. Nothing in this Section 4.1, however, will prevent the Executive from engaging in additional activities in connection with personal investments or from serving in a non-management capacity with any for profit or not for profit organization that does not conflict with his duties under this Agreement, provided that the Executive shall give the Board prior notice of his service to any for profit or not for profit organization so that it may review the same for compliance with the terms of this Agreement.

#### 4.2 Confidentiality; Return of Property.

(a) Executive acknowledges that: (i) the Confidential Information (as hereinafter defined) is a valuable, special, and unique asset of the Company, the unauthorized disclosure or use of which could cause substantial injury and loss of profits and goodwill to the Company; (ii) Executive is in a position of trust and subject to a duty of loyalty to the Company, and (iii) by reason of his employment and service to the Company, Executive will have access to the Confidential Information. Executive, therefore, acknowledges that it is in the Company's legitimate business interest to restrict Executive's disclosure or use of Confidential Information for any purpose other than in connection with Executive's performance of Executive's duties for the Company, and to limit any potential misappropriation of such Confidential Information by Executive. Executive agrees to keep secret and to treat confidentially all of the Confidential Information (as defined below), and not to, without the express prior written consent of Reed's or in connection with the good faith performance of his duties to Reed's, directly or indirectly, (i) divulge, disclose or intentionally make accessible any Confidential Information to any other Person (as defined below) or assist any other Person or entity in improperly using any Confidential Information or (ii) use any Confidential Information for his own purposes or for the benefit of any other Person (except when required to do so by a court of competent jurisdiction, by any governmental agency having supervisory authority over the business of Reed's, or by any administrative body or legislative body (including a committee thereof) with jurisdiction to order the Executive to divulge, disclose or make accessible such Confidential Information; provided, however, that, in the event that the Executive is so required to disclose Confidential Information, the Executive shall, if legally permitted to do so, prior to making any such disclosure, provide Reed's with prompt written notice of such requirement so that Reed's may seek an appropriate protective order); provided, further, that, during the Employment Period, the Executive may utilize any Confidential Information in the course of performing his services under this Agreement. All Confidential Information is and shall remain the property of Reed's. For purposes of this Agreement, "Person" shall mean an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, an estate, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

(b) For purposes of this Agreement, "Confidential Information" shall mean any and all proprietary information, trade secrets, know-how or other information of Reed's or concerning the affairs of Reed's (whether tangible or intangible and whether or not such information is in writing or other physical form), including, but not limited to, data, plans, concepts, programs, procedures, innovations, inventions, improvements, information regarding customers, financial information, costs, prices, earnings, systems, sources of supply, marketing, prospective and executed contracts, budgets, business plans and other business arrangements, information on the performance, identities, capabilities, performance strength and weaknesses, and compensation arrangements of particular managerial or technical employees of Reed's; provided, however, that Confidential Information will not include any information that (i) is in the public domain (other than on account of the actions of Executive) prior to the date Executive proposes to disclose or use such information or (ii) is the subject of discovery. In the event of any discovery request made of Executive, Executive shall give prompt notice of same to the Company, and the Company shall have an opportunity to quash or limit such discovery at the Company's sole expense. If a court orders disclosure or if the Company does not attempt to quash or otherwise limit such discovery, then Executive shall be permitted to disclose such Confidential Information.

(c) Upon termination of the Executive's employment, the Executive shall promptly return to Reed's any car, cell phone, mobile device, laptop or other property provided to the Executive by Reed's, and any Confidential Information or proprietary information of Reed's that remains in the Executive's possession ("Reed's Property"); provided, however, that nothing in this Agreement or elsewhere shall prevent the Executive from retaining and utilizing documents and information relating to his personal benefits, entitlements and obligations, documents relating to his personal tax obligations. If the Executive discovers Reed's Property in his possession after the termination of his employment he shall notify Reed's and promptly either deliver the same to Reed's or destroy it as directed by Reed's.

4.3 Nonsolicitation. To the fullest extent permitted by law, the Executive will not directly or indirectly, individually or on behalf of any person, company, enterprise or entity, or as a sole proprietor, partner, stockholder, director, officer, principal, agent, executive, or in any other capacity or relationship, during his employment with Reed's and for a period of six (6) months thereafter:

(a) encourage, solicit, induce, cause, or in any manner attempt to encourage, solicit, induce or cause any person, firm, corporation, or other entity or organization which is a client, customer, account, vendor, supplier, distributor, licensee of, or has any business relationship with, Reed's or any of its subsidiaries to terminate such relationship with, reduce the amount of business conducted with, or change in a manner adverse to Reed's or its subsidiaries; or

(b) encourage, solicit, induce, cause, or in any manner attempt to encourage, solicit, induce or cause, any person employed by or providing services to Reed's or its subsidiaries to leave, curtail, or change in a manner adverse to Reed's, such employment or service relationship.

4.4 Cooperation. The Executive agrees that, following any termination of the Executive's employment, the Executive will continue to provide reasonable cooperation to Reed's and/or any of its subsidiaries and its or their respective counsel in connection with any investigation, administrative proceeding, or litigation relating to any matter that occurred during the Executive's employment in which the Executive was involved or of which the Executive has knowledge. As a condition of such cooperation, Reed's shall reimburse the Executive for reasonable out-of-pocket expenses incurred at the request of Reed's and shall compensate Executive at a daily rate equal to his daily rate of compensation at the time of termination of his employment. The Executive also agrees that, in the event that the Executive is subpoenaed by any person or entity (including, but not limited to, any government agency) to give testimony or provide documents (in a deposition, court proceeding, or otherwise) that in any way relates to the Executive's employment by Reed's, the Executive will, if legally permitted, give prompt notice of such request to Reed's and, unless legally required to do so, will make no disclosure until Reed's subsidiaries has had a reasonable opportunity to contest the right of the requesting person or entity to such disclosure.

#### 4.5 Property; Inventions and Patents.

(a) Property. Executive agrees that all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos, products, equipment, and all similar or related information and materials (whether patentable or unpatentable) (collectively, "Inventions") which relate to Reed's actual or planned business, research and development, or existing or future products or services and which are conceived, developed, or made by Executive (whether or not during usual business hours and whether or not alone or in conjunction with any other person) while employed by Reed's (including those conceived, developed, or made prior to the date of this Agreement) together with all patent applications, letters patent, trademark, brands, tradename and service mark applications or registrations, copyrights, and reissues thereof that may be granted for or upon any of the foregoing (collectively referred to herein as, the "Work Product"), belong in all instances to Reed's. Executive will promptly disclose such Work Product to Reed's and perform all actions reasonably requested by Reed's (whether during or after the Term) to establish and confirm Reed's ownership of such Work Product (including, without limitation, the execution and delivery of assignments, consents, powers of attorney, and other instruments) and to provide reasonable assistance to Reed's (whether during or after the Term) in connection with the prosecution of any applications for patents, trademarks, brands, trade names, service marks, or reissues thereof or in the prosecution or defense of interferences relating to any Work Product. Executive recognizes and agrees that the Work Product, to the extent copyrightable, constitutes works for hire under the copyright laws of the United States and that to the extent Work Product constitutes works for hire, the Work Product is the exclusive property of Reed's, and all right, title, and interest in the Work Product vests in Reed's. To the extent any Work Product is not a work for hire, the Work Product, and all of Executive's right, title, and interest in Work Product, including without limitation every priority right, is hereby assigned to the Company.

(b) Cooperation. Executive shall, during the Term and at any time thereafter, at the expense of Reed's and with no expense or potential expense or liability to the Executive, assist and cooperate with the Company in obtaining for the Company the grant of letters patent, copyrights, and any other intellectual property rights relating to the Work Product in the United States and/or such other countries as the Company may designate. With respect to Work Product, Executive shall, during the Term and at any time thereafter, at the expense of Reed's and with no expense or potential expense or liability to the Executive, execute all applications, statements, instruments of transfer, assignment, conveyance or confirmation, or other documents, furnish all such information to the Company and take all such other appropriate lawful actions as the Company requests that are necessary to establish Reed's ownership of such Work Product. Executive will not assert or make a claim of ownership of any Work Product, and Executive will not file any applications for patents or copyright or trademark registration relating to any Work Product, except on behalf of or as directed by Reed's.

(c) No Designation as Inventor; Waiver of Moral Rights. Executive agrees that the Company shall not be required to designate Executive as the inventor or author of any Work Product. Executive hereby irrevocably and unconditionally waives and releases, to the extent permitted by applicable law, all of Executive's rights to such designation and any rights concerning future modifications to any Work Product. To the extent permitted by applicable law, Executive hereby waives all claims to moral rights in and to any Work Product.

(d) Pre-Existing and Third Party Materials. Executive will not, in the course of employment with Reed's, incorporate into or in any way use in creating any Work Product any pre-existing invention, improvement, development, concept, discovery, works, or other proprietary right or information owned by Executive or in which Executive has an interest without Reed's prior written permission. Executive hereby grants the Company a nonexclusive, royalty-free, fully-paid, perpetual, irrevocable, sublicensable, worldwide license to make, have made, modify, use, sell, copy, and distribute, and to use or exploit in any way and in any medium, whether or not now known or existing, such item as part of or in connection with such Work Product. Executive will not incorporate any invention, improvement, development, concept, discovery, intellectual property, or other proprietary information owned by any party other than Executive into any Work Product without the Company's prior written permission.

(e) Attorney-in-Fact. Executive hereby irrevocably designates and appoints Reed's and its duly authorized officers and agents as Executive's agent and attorney-in-fact, to act for and on Executive's behalf to execute and file any such applications and to do all other lawfully permitted acts as contemplated by this Section 4 above to further the prosecution and issuance of patents, copyright, trademark, and mask work registrations with the same legal force and effect as if executed by Executive, if Reed's is unable because of Executive's unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Executive's signature for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright or trademark registrations covering the Work Product owned by Reed's pursuant to this Section.

#### Section 5 Compensation.

5.1 Base Salary. The Executive will be paid a base salary at the initial rate of \$250,000.00 per year (the "Base Salary"). Base Salary shall be subject to annual review for additional increase, but not decrease, in the sole discretion of the Board. The Base Salary will be payable in equal periodic installments in accordance with Reed's customary payroll practices.

#### 5.2 Bonus.

(a) Annual Bonus. In addition to the Base Salary, the Executive will be eligible to receive an annual or other periodic bonus for each partial or full calendar year (which may, to the extent not relating to achievement of a specific objective established by the Board in consultation with the Executive as provided below, be pro-rated for partial calendar years) included in the Term at a target amount equal to 30% of then current Base Salary payable and based upon performance criteria to be established by the Board in consultation with the Executive which are anticipated to consist of specific objectives for which specified portions of Bonus will be payable upon achievement and any remainder discretionary based on individual and Company performance as determined by the Board ("Bonus"). Except as otherwise provided herein, in order to be eligible to receive the Bonus, the Executive must be employed at the time of achievement of the specific objective relating thereto. Any portion of Bonus relating to achievement of a specific objective will be paid upon or as soon as practicable after achievement of such objective, and all Bonus payments will in any event be paid not later March 15 of the calendar year following the full or partial calendar year to which they relate. The Board and the Executive will consult in good faith to establish the Bonus criteria for each full or partial year included in the Term starting with the Effective Date and with the commencement of each calendar year included in the Term commencing after the Effective Date.

5.3 Benefits. The Executive will be entitled to four weeks of paid vacation per calendar year in accordance with the Company's vacation and paid time off policy, inclusive of vacation days and sick days and excluding standard paid Company holidays, in the same manner as paid time off days for employees of the Company generally accrue. The Executive and his dependents will be entitled to participate in all medical insurance and other benefit programs in effect from time to time and available to senior executives of Reed's at levels commensurate with Executive's position as COO. Executive shall be entitled to reimbursement for expenses incurred in connection with performance of services to Reed's, including, without limitation, mobile phone and other communications equipment and travel expenses, in accordance with Reed's expense reimbursement policies as in effect from time to time. Reed's will also provide Executive with a car allowance initially at \$900 per month and subject to increase in the discretion of the Company. Upon submission of invoice, Reed's will reimburse the Executive for or pay directly all costs up to \$2,500 incurred in connection with the negotiation and preparation of this Agreement.

5.4 Equity. The Executive shall be eligible to receive an initial equity award of 446,000 stock options ("Initial Equity Award") 90 days after the Effective Date ("Grant Date"), in accordance with the terms and conditions of available plan and subject to Board approval and plan availability. Of the Initial Equity Award, one-half (223,000 options) will vest in equal increments of 55,750 on each of the first, second, third and fourth anniversaries of the grant date ("Incentive Equity"). Of the Initial Equity Award, the remainder (223,000 options) will vest based on performance criteria to be determined by the Board or compensation committee of the Board (as the case may be) in its sole discretion ("Performance Equity"). Vesting of all Incentive Equity and Performance Equity (and related payment rights) shall accelerate upon any Change in Control. "Change in Control" for this purpose means any (i) any individual, entity or group (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1933) (a "Person") acquires beneficial ownership, directly or indirectly (within the meaning of Rule 13d-3 promulgated under the Exchange Act) (a "Beneficial Owner"), of more than fifty percent of the combined voting power of the then issued and outstanding shares of the voting common stock of the Company (the "Voting Stock"), (ii) the occurrence of a merger, consolidation, reorganization, share exchange or similar corporate transaction, whether or not the Company is the surviving corporation, other than a transaction which would result in the Voting Stock outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent of the voting stock of the Company or such surviving entity immediately after such transaction, or (iii) the sale, transfer or disposition of all or substantially all of the business and assets of the Company to any Person. The Executive may also make equity investments in Reed's on terms that may be agreed upon by the Executive and Reed's.

## Section 6 Termination of Employment.

6.1 Termination by Reed's. Reed's may terminate the Executive's employment with Reed's for Cause or without Cause, effective immediately on the day Reed's gives notice of such termination to the Executive. For purposes of this Agreement, "Cause" means (i) a breach by Executive of his or her fiduciary duties to the Company; (ii) Executive's breach of this Agreement, which, if curable, remains uncured or continues after 30 days' notice by the Company thereof; (iii) the commission of (A) any crime, other than motor vehicle crimes, constituting a felony in the jurisdiction in which committed, (B) any felony involving moral turpitude, or (C) any other criminal act involving embezzlement, misappropriation of money, fraud, theft, or bribery (whether or not a felony); (iv) illegal or controlled substance abuse or insobriety while on the Company's premises, with an employee, customer or vendor, or while on Company business by Executive; (v) Executive's material negligence or dereliction in the performance of, or failure to perform Executive's duties of employment with the Company, which remains uncured or continues after 30 days' notice by the Company thereof; (vi) any conduct, action or behavior by Executive that is, or is reasonably expected to be, materially damaging to the Company, whether to the business interests, finance or reputation; or (vii) any disqualifying event causing Company "bad actor" disqualification under Rule 506(d) of the Securities Act of 1933, as amended. The cure periods set forth in Sections 6.1(ii) and 6.1(v) shall be extended if (x) Executive commenced such cure within the aforesaid thirty (30) day period, (y) Executive pursues such cure to completion, and (z) such further cure period does not cause material harm to the Company.

6.2 Termination by the Executive. The Executive may terminate the Executive's employment with Reed's for Good Reason or without Good Reason, by written notice to Reed's effective no earlier than 30 days after the date of such notice if termination is other than for Good Reason (provided that Reed's shall have the right to waive such 30-day notice period and accelerate termination to any date on or after the date of such notice) and effective upon the expiration of the cure period described below in this Section 6.2 if termination is for Good Reason. During any period between receipt of notice of termination from the Executive, Reed's may suspend, reduce, or otherwise modify any or all of Executive's authority, duties, and responsibilities, and may require the Executive's absence from Reed's offices without any such suspension, reduction, modification, or requirement constituting grounds for Good Reason. "Good Reason" means any (i) material breach (whether or not specified above) of this Agreement by Reed's, (ii) change in Executive's title, duties, or status within the Company that differ materially from Executive's title, duties and status hereunder, and/or (iii) actual or de facto change in the Company's principal executive office headquarters and personnel to a location that is more than 60 miles from the Company's present headquarters in Norwalk, Connecticut. An event described in this Section 6.2 will not constitute Good Reason unless the Executive provides written notice to Reed's of the Executive's intention to resign for Good Reason and specifying the event or circumstance giving rise to Good Reason within 90 days of its initial existence and Reed's does not cure such breach or action within 30 days after the date of the Executive's notice.

6.3 Death and Disability. The Executive's employment under this Agreement will terminate upon the Executive's death. In addition, Reed's may terminate the Executive's employment with Reed's by written notice to the Executive due to Disability. For purposes of this Agreement, "Disability" means that the Executive has been unable, with or without reasonable accommodation and due to physical or mental incapacity, to substantially perform the essential functions of his duties for 120 days, whether consecutive or non-consecutive, within any calendar year.

6.4 Termination of Agreement. This Agreement will terminate when all obligations of the parties under this Agreement have been satisfied.

6.5 Resignations. Upon any termination of the Executive's employment hereunder for any reason, except as may otherwise be requested by Reed's in writing, the Executive agrees that he will resign from any and all directorships, committee memberships and any officer positions that he holds with Reed's or any of its subsidiaries.

#### Section 7 Remuneration upon Termination of Employment

7.1 Termination by Reed's without Cause or by the Executive for Good Reason. If the Executive's employment with Reed's is terminated pursuant to Section 6.1 by Reed's without Cause or pursuant to Section 6.2 by the Executive for Good Reason, the Executive will be entitled to the following:

(a) the Accrued Benefits;

(b) payment in lump sum within 30 days after the date of termination of employment of an amount equal to 6 months of the Executive's Base Salary in effect immediately prior to the Executive's termination of employment with Reed's plus any Bonus earned and unpaid as well as a prorated Bonus for the year of termination, vested Incentive Equity and six months acceleration of unvested Incentive Equity, calculated on a pro-rata, monthly basis and based on full calendar months (the "Severance Amount"). For clarity, Performance Equity will not be subject to six-month acceleration. In addition, to the extent permitted by applicable law, subject to the Executive's election of COBRA continuation coverage under Reed's group health plan, on the first regularly scheduled payroll date of each month during the six month period following the date of termination of employment (the "Severance Period"), Reed's will pay the Executive an amount equal to the difference between the monthly COBRA premium cost and the premium cost to the Executive as if the Executive were an employee of Reed's; provided, that such payments shall cease earlier than the expiration of the Severance Period in the event that the Executive becomes eligible to receive any comparable health benefits, including through a spouse's employer, during the Severance Period (the "COBRA Payments"). Executive will notify Reed's of Executive's eligibility for health benefits during the Severance Period within 15 days of such eligibility; and

(c) any and all rights he may have as a holder of vested equity interests in Reed's or under any applicable plan, program, or arrangement of Reed's, including the vested awards under the Initial Equity Grant.

7.3 Termination by Reed's for Cause, by the Executive without Good Reason. If the Executive's employment with Reed's is terminated for Cause, or by the Executive without Good Reason, the Executive will be entitled to the Accrued Benefits and any and all rights he may have as a holder of vested equity interests in Reed's or under any applicable plan, program, or arrangement of Reed's, including vested awards under the Initial Equity Grant.

7.4 Termination as a Result of Death or Disability. In the event of the termination of the Executive's employment with Reed's pursuant to Section 6.3 as a result of death or Disability, the Executive or the Executive's heirs will be entitled to the Accrued Benefits.

7.5 Release. The payment of the Severance Amount and the COBRA Payment shall be conditioned upon the Executive's (or, if applicable the Executive's estate's or legal representative's) execution, delivery to Reed's, and non-revocation of a release of claims (the "Release of Claims") in substantially the form attached to this Agreement as Exhibit A within 30 days following the date of the Executive's termination of employment hereunder. Further, to the extent that any portion of the Severance Amount or COBRA Payment constitutes "nonqualified deferred compensation" for purposes of Section 409A of the Code (as defined below), any payment of any amount otherwise scheduled to occur prior to the thirtieth (30th) day following the date of the Executive's termination of employment hereunder, but for the condition on executing the Release of Claims as set forth herein, shall not be made until the first regularly scheduled payroll date following such thirtieth (30th) day, after which any remaining installment of the Severance Amount or the COBRA Payment, as applicable, shall thereafter be provided to Employee according to the applicable schedule set forth herein. With respect to any portion of the Severance Amount or COBRA Payment that does not constitute "nonqualified deferred compensation" for purposes of Section 409A of the Code (as defined below), any payment of any amount otherwise scheduled to occur following the date of the Executive's termination of employment hereunder, but for the condition on executing the Release of Claims as set forth herein, shall not be made until the first regularly scheduled payroll date following the date such Release of Claims is timely executed and the applicable revocation period has ended, after which the entire Severance Amount and any unpaid installments of the COBRA Payment, as applicable, shall thereafter be provided to Employee according to the applicable schedule set forth herein. Each payment of the Severance Amount or COBRA Payment shall be deemed to be a separate payment for purposes of Section 409A of the Code.

7.6 Obligations Absolute. The payment and other obligations of Reed's under this Agreement or in connection with the Incentive Equity are absolute and unconditional and not subject to offset or any other defense.

#### Section 8 General Provisions.

8.1 Notices. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally or by recognized overnight courier service (costs prepaid), (b) sent by facsimile with confirmation of transmission by the transmitting equipment (or, the first business day following such transmission if the date of transmission is not a business day) (c) sent by electronic mail with receipt acknowledged by the recipient via email reply, or (d) received or rejected by the addressee, if sent by certified or registered mail, return receipt requested; in each case to the following addresses or facsimile numbers and marked to the attention of the individual (by name or title) designated below (or to such other address, facsimile number or individual as a party may designate by notice to the other parties in writing):

If to the Executive:

Norman E. Snyder  
88 Grey Rocks Road  
Wilton, CT 06897

If to Reed's:

Attention: Iris Snyder  
Chief Financial Officer  
201 Merritt 7 Corporate Park  
Norwalk CT 06851

8.2 Amendment. This Agreement may not be amended, supplemented or otherwise modified except in a writing signed by the Executive and a director or authorized officer of Reed's (other than the Executive).

8.3 Waiver and Remedies. The Executive and Reed's may (a) extend the time for performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained in this Agreement or in any certificate, instrument or document delivered pursuant to this Agreement or (c) waive compliance with any of the covenants, agreements or conditions for the benefit of such party contained in this Agreement. Any such extension or waiver will be valid only if set forth in a written document signed on behalf of the party against whom the waiver or extension is to be effective. No extension or waiver will apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any covenant, agreement or condition, as the case may be, other than that which is specified in the written extension or waiver. No failure or delay by a party in exercising any right or remedy under this Agreement or any of the documents delivered pursuant to this Agreement, and no course of dealing between the parties, operates as a waiver of such right or remedy, and no single or partial exercise of any such right or remedy precludes any other or further exercise of such right or remedy or the exercise of any other right or remedy. Any enumeration of a party's rights and remedies in this Agreement is not intended to be exclusive, and a party's rights and remedies are intended to be cumulative to the extent permitted by law and include any rights and remedies authorized in law or in equity. Because Executive's services are special, unique, and extraordinary and because Executive has access to Confidential Information and Work Product, the parties hereto agree that money damages may be an inadequate remedy for any breach of Section 4 of this Agreement. Therefore, in the event of a breach or threatened breach of Section 4 of this Agreement, the Company, or any of its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security).

8.4 Entire Agreement. This Agreement constitutes the entire agreement between the Executive and Reed's with respect to its subject matter and supersedes any prior understandings, agreements or representations between the parties, written or oral, with respect to the subject matter of this Agreement.

8.5 Assignment and Successors. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, successors and assigns, except that the Executive may not assign any rights under this Agreement without the prior written consent of Reed's and Reed's may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Executive except in the case of an assignment of this Agreement to a successor to all or substantially all of the business and assets of Reed's and its subsidiaries or any business division thereof or a restructuring of Reed's. The Executive's obligations under this Agreement are personal to the Executive and may not be delegated.

8.6 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way and the parties agree to negotiate in good faith to replace such invalid, illegal and unenforceable provision with a valid, legal and enforceable provision that achieves, to the greatest lawful extent under this Agreement, the economic, business and other purposes of such invalid, illegal or unenforceable provision. A court of competent jurisdiction, if it determines any provision of this Agreement to be unreasonable in scope, time or geography, is hereby authorized by the Executive and Reed's to enforce the same in such narrower scope, shorter time or lesser geography as such court determines to be reasonable and proper under all the circumstances.

8.7 Governing Law; Mediation. The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the Connecticut without giving effect to any choice of law rules or other conflicting provision or rule that would cause the laws of any jurisdiction to be applied. Reed's and the Executive agree that any and all disputes arising out of the terms of this Agreement, the Executive's employment by Reed's, the Executive's service as an employee or officer of Reed's or any of its subsidiaries, or the Executive's compensation and benefits, will be litigated in the federal or state courts in Fairfield County, Connecticut; provided however, prior to the filing of any lawsuit, the parties agree to mediate any dispute, controversy, or claim between them arising out of this Agreement. Either party may commence mediation by providing the other parties involved with a written demand for mediation, setting forth the subject of the dispute and the relief requested. The mediation shall be administered by JAMS, AAA or some other neutral mediator designated by the party that first submits the demand for mediation. The mediation fees, if any, shall be divided equally among the parties involved. If a settlement is not reached by the parties within thirty (30) days of the demand for mediation, then the aggrieved party may then file for suit pursuant to this Agreement. The prevailing party's fees and costs resulting from litigation shall be paid by the non-prevailing party. Notwithstanding the foregoing, nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or specific performance as provided in this Agreement.

8.8 Survival. The respective rights and obligations of the parties hereunder shall survive any termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations and to the extent that any performance is required following termination or expiration of this Agreement.

8.9 Withholding. All amounts paid pursuant to this Agreement shall be subject to withholding for taxes (federal, state, local, non-U.S. or otherwise) to the extent required by applicable law.

8.10 Counterparts. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. The signatures of all parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending party's signature is as effective as signing and delivering the counterpart in person.

8.11 Code Section 409A Compliance ; Parachute Payments.

(a) Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from, or in the alternative, comply with, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the published guidance thereunder ("Section 409A"). A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment that are considered "nonqualified deferred compensation" under Section 409A unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "Termination Date," or like terms shall mean "separation from service." Notwithstanding any provision of this Agreement to the contrary, if Executive is a "specified employee" within the meaning of Section 409A, any payments or arrangements due upon a termination of Executive's employment under any arrangement that constitutes a "nonqualified deferral of compensation" within the meaning of Section 409A and which do not otherwise qualify under the exemptions under Treas. Regs. Section 1.409A-1 (including without limitation, the short-term deferral exemption or the permitted payments under Treas. Regs. Section 1.409A-1(b)(9)(iii)(A)), shall be delayed and paid or provided on the earlier of (a) the date which is six months after Executive's "separation from service" for any reason other than death, or (b) the date of Executive's death. This Agreement may be amended without requiring Executive's consent to the extent necessary (including retroactively) by the Company in order to preserve compliance with Section 409A. The preceding shall not be construed as a guarantee of any particular tax effect for Executive's compensation and benefits and the Company does not guarantee that any compensation or benefits provided under this Agreement will satisfy the provisions of Section 409A. After any Termination Date, Executive shall have no duties or responsibilities that are inconsistent with having a "separation from service" within the meaning of Section 409A as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" as determined under Section 409A and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" within the meaning of Section 409A and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of the Company.

(b) All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A. To the extent that any reimbursements are taxable to Executive, such reimbursements shall be paid to Executive on or before the last day of Executive's taxable year following the taxable year in which the related expense was incurred. Reimbursements shall not be subject to liquidation or exchange for another benefit and the amount of such reimbursements that Executive receives in one taxable year shall not affect the amount of such reimbursements that Executive receives in any other taxable year.

(c) If any payment, benefit, or distribution of any type to or for the benefit of Executive, whether paid or payable, provided or to be provided, or distributed or distributable pursuant to the terms of this Agreement or otherwise (collectively, the "Parachute Payments") would (as determined by the Company) subject Executive to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), the Parachute Payments shall be reduced so that the maximum amount of the Parachute Payments (after reduction) shall be one dollar less than the amount which would cause the Parachute Payments to be subject to the Excise Tax. The Company shall reduce or eliminate the Parachute Payments by first reducing or eliminating any cash Parachute Payments that do not constitute deferred compensation within the meaning of Section 409A, then by reducing or eliminating any other Parachute Payments that do not constitute deferred compensation within the meaning of Section 409A, then by reducing or eliminating all other Parachute Payments that do constitute deferred compensation within the meaning of Section 409A, beginning with those payments last to be paid, subject to and in accordance with all applicable requirements of Section 409A.

8.12 Voluntary Execution; Representations. Executive acknowledges that (a) he or she has consulted with or has had the opportunity to consult with independent counsel of his or her own choosing concerning this Agreement and has been advised to do so by the Company, and (b) he or she has read and understands this Agreement, is competent and of sound mind to execute this Agreement, is fully aware of the legal effect of this Agreement, and has entered into it freely based on his or her own judgment and without duress.

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

**REED'S, INC.**

*By: /s/ Iris Snyder*

Name: Iris Snyder

Title: Chief Financial Officer

Date: September 30, 2019

**EXECUTIVE**

*/s/ Norman E. Snyder*

Norman E. Snyder

Date: September 30, 2019

*[Signature page to Employment Agreement]*

**FORM OF RELEASE**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, ("Executive"), on behalf of himself and his heirs, legal representatives, administrators, executors, successors and assigns, and each of them, for good and valuable consideration received as set forth in the Employment Agreement dated as of , 2019 (the "Employment Agreement") between Reed's, Inc., a Delaware corporation (the "Company"), does hereby unconditionally, knowingly, and voluntarily release and forever discharge the Company, and its present and former related companies, subsidiaries and affiliates, and all of their present and former executives, officers, managers, directors, owners, members, shareholders, partners, employees, agents, and attorneys, including in their individual capacity, and each of its and their successors and assigns (hereinafter collectively the "Released Parties"), from any and all known or unknown claims, demands, actions or causes of action that now exist or may arise in the future, based upon events occurring or omissions on or before the date of the execution of this Release, including, but not limited to any and all claims whatsoever pertaining in any way to Executive's employment at the Company or with any of the Released Parties or the termination of Executive's employment, including, but not limited to, any claims under: (1) the Americans with Disabilities Act; the Family and Medical Leave Act; Title VII of the Civil Rights Act; 42 U.S.C. Section 1981; the Older Workers Benefit Protection Act; the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"); the Employee Retirement Income Security Act of 1974; the Civil Rights Act of 1866, 1871, 1964, and 1991; the Rehabilitation Act of 1973; the Equal Pay Act of 1963; the Vietnam Veteran's Readjustment Assistance Act of 1974; the Occupational Safety and Health Act; and the Immigration Reform and Control Act of 1986; and any and all other federal, state, local or foreign laws, statutes, ordinances, or regulations pertaining to employment, discrimination or pay; (2) any state tort law theories under which an action could have been brought, including, but not limited to, claims of negligence, negligent supervision, training and retention or defamation; (3) any claims of alleged fraud and/or inducement, or alleged inducement to enter into this Release; (4) any and all other tort claims; (5) all claims for attorneys' fees and costs; (6) all claims for physical, mental, emotional, and/or pecuniary injuries, losses and damages of every kind, including but not limited to earnings, punitive, liquidated and compensatory damages, and employee benefits; (7) any and all claims whatsoever arising under any of the Released Parties' express or implied contract or under any federal, state, local, or foreign law, ordinance, or regulation, or the Constitution of any State or the United States; (8) any and all claims whatsoever against any of the Released Parties for wages, bonuses, benefits, fringe benefits, vacation pay, or other compensation or for any damages, fees, costs, or benefits, in each case, except to the extent Executive has vested rights in any of the same; and (9) any and all claims whatsoever to reinstatement (collectively, the "Released Claims"); provided, however, that, notwithstanding anything to the contrary contained herein, this Release shall not cover and the Released Claims shall extend to any rights or claims, if any, of Executive (A) as a holder of equity interests in the Company, (B) to indemnification or advancement of expenses, (C) under Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (D) under any profit-sharing and/or retirement plans or benefits in which Executive has vested rights, or (E) under Section 7 of the Employment Agreement. Executive also intends that this Release operate as a general release of any and all claims to the fullest extent permitted by law and a waiver of all unknown claims of the type being released hereunder.

**Notwithstanding the provisions of any state statute in effect that provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor, and for the purpose of implementing a full and complete release and discharge of all Releasees with respect to claims in all jurisdictions, Executive expressly acknowledges that this is intended to include not only claims that are known, anticipated, or disclosed, but also claims that are unknown, unanticipated, and undisclosed.**

Executive acknowledges that the Severance Amount and the COBRA Payment are in addition to anything of value to which Employee already is entitled from the Company and constitutes good and valuable consideration for this Release.

Executive represents and warrants that he has not previously filed, and to the maximum extent permitted by law agrees that he will not file, a complaint, charge, or lawsuit against any member of the Released Parties regarding any of the claims released herein. If, notwithstanding this representation and warranty, the Executive has filed or files such a complaint, charge, or lawsuit, he agrees that he shall cause such complaint, charge, or lawsuit to be dismissed with prejudice and shall pay any and all costs required in obtaining dismissal of such complaint, charge, or lawsuit, including without limitation the attorneys' fees of any member of the Released Parties against whom he has filed such a complaint, charge, or lawsuit. This paragraph shall not apply, however, to a claim of age discrimination under the ADEA or to any non-waivable right to file a charge with the United States Equal Employment Opportunity Commission (the "EEOC"); *provided, however*, that if the EEOC were to pursue any claims relating to the Executive's employment with Company, the Executive agrees that he shall not be entitled to recover any monetary damages or any other remedies or benefits as a result and that this Release and Section 7 of the Employment Agreement will control as the exclusive remedy and full settlement of all such claims by the Executive.

Executive agrees not to make disparaging, critical or otherwise detrimental comments to any person or entity concerning the Released Parties; the products, services or programs provided or to be provided by the Released Parties; the business affairs or the financial condition of the Released Parties; or the circumstances surrounding Executive's employment and/or termination of employment from Company. Company agrees to cause its executive and senior management teams not to take any action, or encourage others to take any action, to disparage or criticize Executive. The Company agrees to instruct its personnel not to take any action, to disparage or criticize Executive.

Executive acknowledges that he has been given the opportunity to review and consider this Release for twenty-one (21) days from the date he received a copy. If he elects to sign before the expiration of the twenty-one (21) days, Executive acknowledges that he will have chosen, of his own free will without any duress, to waive his right to the full twenty-one (21) day period. Executive may revoke this Release after signing it by giving written notice to the Company's Board of Directors, within seven (7) days after signing it (the "Revocation Period"). This Release, provided it is not revoked, will be effective on the eighth (8th) day after execution. The Executive acknowledges and agrees that if he revokes this Release during the Revocation Period, this Release will be null and void and of no effect, and neither the Company nor any other Released Party will have any obligations to pay the Executive the amounts under Section 7 of the Employment Agreement.

Executive acknowledges that he has consulted with an attorney prior to signing this Release and that he has no knowledge of any facts or circumstances that give rise or could give rise to any claims under any of the laws listed in this Release.

Executive is signing this Release knowingly, voluntarily and with full understanding of its terms and effects. Executive is signing this Release of his own free will without any duress, being fully informed and after due deliberation. Executive voluntarily accepts the consideration provided to him for the purpose of making full and final settlement of all claims referred to above. This Release shall be governed by and construed in accordance with the laws of the State of Connecticut.

## Section 4: EX-10.3

### MANUFACTURING AND DISTRIBUTION AGREEMENT

This Manufacturing and Distribution Agreement (this “**Agreement**”) is made and entered into as of October 11, 2019 (the “**Effective Date**”), by and between Reed’s, Inc., a Delaware corporation (“**Reed’s**”), and B C Marketing Concepts Inc. *dba* Full Sail Brewing Company, an Oregon corporation (“**Company**”).

#### RECITALS

**WHEREAS**, Company is in the business of manufacturing, packaging, promoting, selling and distributing alcohol beverage products;

**WHEREAS**, Reed’s possesses all necessary rights in that certain brand known as REED’S and “*Reed’s Craft Ginger Beer*” for ginger-based beverage products, including, without limitation, the intellectual property identified on Exhibit A to this Agreement, and other trademarks, logos, trade dress, copyrights, promotional slogans, product and ingredient claims, color combinations, distinctive features, documentation and goodwill associated therewith, and all derivative works, updates, versions, improvements, enhancements and other modifications to the foregoing (the “**Reed’s Brand**”); and

**WHEREAS**, Company desires to obtain from Reed’s, and Reed’s is willing to grant to Company, an exclusive license to use the names and logos identified on Exhibit A (the “**Licensed Marks**”) in connection with the manufacturing, packaging, promotion, sale, and distribution of the Products (as defined below) in the Territory (as defined below), in accordance with and subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

**1. Definitions.** As used in this Agreement, the following terms shall be deemed to have the following meanings:

1.1 “**Applicable Laws and Regulations**” shall mean any law, statute, rule, regulation, ordinance or other binding pronouncements of any duly authorized court, tribunal, arbitrator, agency, commission, official or other instrumentality of any federal, state, province, county, city or other political subdivision (domestic or foreign) having the effect of law in the United States, any foreign country or territory or any domestic or foreign state, province, county, city or other political subdivision applicable to the Company or its business.

1.2 “**Company Intellectual Property**” means all Intellectual Property that: (i) was owned or developed by Company prior to the execution of this Agreement; and (ii) is or was independently developed or acquired by Company without contribution or assistance from Reed’s, Reed’s Confidential Information, or Reed’s Intellectual Property. Company Intellectual Property includes but is not limited to Company’s know-how and independently developed recipes and alcohol beverage production processes, including the neutral alcohol beverage base that contributes alcohol to the Products (“**Neutral Alcohol Beverage Base**”).

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1.3 “**Development Committee**” has the meaning ascribed to such term under the Recipe Development Agreement.

1.4 “**Discounts**” means all actual and documented rebates, discounts, returns, and other promotional allowances.

1.5 “**Initial Term**” means a five (5) year period beginning on the Effective Date.

1.6 “**Intellectual Property**” means any and all domestic and international rights in and to: (i) trademarks, service marks, trade dress, logos, trade names and Internet domain names, together with all goodwill associated therewith; (ii) patents, patent disclosures, patentable subject matter, inventions, any improvements thereto and know-how; (iii) copyrights, copyrightable works, derivative works thereof and moral rights; (iv) trade secrets and confidential information; (v) other intellectual proprietary property (of every kind and nature and however designated), whether arising by operation of law, contract, license or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing now or hereafter in force or hereafter acquired or adopted.

1.7 “**Gross Sales Revenue**” means the actual amount of invoiced sales by Company in connection with sales of Products.

1.8 “**Net Revenue**” means the Gross Sales Revenue less all Discounts and applicable excise taxes.

1.9 “**Products**” means the ready-to-drink ginger-based flavored alcohol beverage products identified on Exhibit B bearing the Licensed Marks and manufactured by Company pursuant to this Agreement.

1.10 “**Recipe**” means the ingredients and methods of combining and processing ingredients for the Products, provided that a Recipe will not include the composition of or recipe for the Neutral Alcohol Beverage Base (it being understood that the amount of Neutral Alcohol Beverage Base and the process for combining and processing it with other ingredients shall be included in the Recipe).

1.11 “**Reed’s Intellectual Property**” means all Intellectual Property that: (i) was owned or developed by Reed’s prior to the execution of this Agreement, including the Licensed Marks; (ii) was or is independently developed by Reed’s without contribution or assistance from Company or Company’s Intellectual Property; and (iii) the Recipe.

1.12 “**Specifications**” means the specifications for the Products to be developed by the Development Committee.

1.13 “**Recipe Development Agreement**” means the Recipe Development Agreement entered into by the parties concurrently with this Agreement, as it may be amended, modified, supplemented or restated from time to time.

1.14 “**Renewal Term**” means up to three additional 2-year terms following the Initial Term, each such additional term to begin automatically unless either party provides written notice of non-renewal at least 180 days prior to the end of the then-current term.

1.15 “**Term**” means the Initial Term plus any Renewal Term.

1.16 “**Territory**” means the United States and Canada.

## **2. Grant of License.**

2.1 Licensed Marks License. For the Term, and subject to all of the terms and conditions of this Agreement, Reed’s hereby grants to Company, and Company accepts, (a) an exclusive right and license to use the Licensed Marks in connection with manufacturing, packaging, promoting, selling and distributing the Products in the Territory, and (b) a non-exclusive right and license to use other elements of the Reed’s Brand in sales presentations, business development collateral and websites operated by Company, and in media in connection with advertising the Products, including but not limited to print advertising, radio and television advertising, point-of-sale advertising, internet advertising, product packaging, sales brochures, mailers and inserts (together, the “**Marketing and Advertising Materials**”) provided all such materials are approved in writing by Reed’s pursuant to Section 3.3 of this Agreement. The foregoing rights to promote, sell and distribute are limited to sales in the applicable Territory. All rights not expressly granted herein are retained by Reed’s including but not limited to the right to license the Reed’s Brand for other beverage products and in other territories.

2.2 Limited Rights. Company shall not acquire any other right in the Reed’s Brand other than as set forth in Section 2.1 above. Company shall not apply at any time anywhere in the world for any trademark or other intellectual property protection in its name for any of the Reed’s Brand. Improvements and modifications to the Reed’s Brand created by either party during the Term shall, from the time of conception or development, be the property of Reed’s.

2.3 Recipe License. Company acknowledges Reed’s sole and exclusive ownership, and right to exercise control over the nature and quality, of any Recipe associated with the Products, together with modifications to the Recipes made by Reed’s or Company, or both parties jointly. Company shall not acquire, and shall not attempt to authorize or permit any third party to acquire, any right with respect to any Recipe. The Parties agree that any Recipe is a confidential trade secret of Reed’s and is owned by Reed’s, and confidentiality obligations of Company related to these trade secrets shall continue perpetually (for so long as they remain trade secrets under Applicable Law and Regulations). Without limiting the foregoing, Reed’s hereby grants to Company an exclusive limited right and license during the Term to use each applicable Recipe in connection with manufacturing, packaging, promoting, selling and distributing the Products in the Territory. Except as set forth in the foregoing sentence, Company shall have no other right to use any Recipe during the Term, and shall have no right to use any Recipe after the Term.

2.4 Alcohol Permitting. Reed’s understands and agrees that in conjunction with the purpose of this Agreement, Company or its designee may register certain of the Licensed Marks in connection with the Products with the U.S. Federal Alcohol and Tobacco Taxation and Trade Bureau (“**TTB**”) and similar state alcohol beverage regulatory authorities throughout the Territory, including Canadian and provincial authorities, where the Products will be distributed by or its authorized distributors in accordance with this Agreement. Upon the expiration or termination of this Agreement, Company agrees to terminate such registrations by Company and to file written requests to remove the Licensed Marks from Company’s permits and licenses.

### 3. Labels; Samples; Advertising and Marketing Materials.

3.1 Labels. Company shall be responsible for ensuring that all label content for the Products is TTB-compliant and complies with any other applicable requirements, laws, rules or regulations, provided that Company shall be entitled to rely upon the accuracy of any claims associated with the Reed's Brand that is an element of any Product labels. Company shall be responsible for ordering all labels for the Products. Reed's will provide digital files for the Licensed Marks to be incorporated into the label content in a form sufficient for Company to prepare and order the production all labels and packaging materials for the Products.

3.2 Samples. After approval of a Recipe for a Product pursuant to the Recipe Development Agreement and subject to the alcohol permitting and label compliance requirements set forth in Sections 2.4 and 3.1 and all other Applicable Laws and Regulations, Company agrees that Reed's shall have the right, in its reasonable discretion, to approve or disapprove in advance of sale (i) all Specifications and, without limiting the foregoing, the quality, style, colors, appearance, and materials associated with the Products, including Product taste and Product labeling and packaging, and (ii) any and all endorsements, trademarks, trade names, designs and logos (whether a Licensed Mark or not) used in connection with Products in any form or medium. On completion of trial samples of Products (each, a "**Trial Sample**") and before commencing any commercial scale production of Products, Company shall submit samples of the Trial Samples to the Development Committee for inspection and approval. Approval of a Trial Sample by the Reed's- designated members of the Development Committee shall be deemed approval of the Trial Sample by Reed's. Prior to commercialization of each Product, Company shall submit the final commercial scale samples (each, a "**Commercial Scale Sample**") of each Product to the Development Committee for its review and approval. The Commercial Scale Sample of each Product will include the proposed final container and packaging for such Product. Approval of a Commercial Scale Sample by the Reed's-designated members of the Development Committee shall be deemed approval of the Commercial Scale Sample by Reed's. Reed's acknowledges that time is of the essence with respect to approval of the Trial Samples and Commercial Scale Samples, and if Reed's has not approved or rejected any Trial Sample or Commercial Scale Sample submitted by Company to the Development Committee within fifteen (15) business days, the submission shall be deemed approved by Reed's. Reed's may not later revoke its approval of particular materials once such approval has been granted. Any subsequent change to any Product previously approved by Reed's shall require further approval by Reed's in accordance with the terms and conditions of this

Section 3.2.

3.3 Marketing Materials and Plans. Company shall develop a marketing and distribution plan for the Products in the Territory. With respect to Marketing and Advertising Materials displaying the Licensed Marks or any other element of the Reed's Brand, Company shall send to the Development Committee for approval a representative sample of each such item before Company uses such item on or in connection with any Product. Reed's shall have the right, in its reasonable discretion, to approve or disapprove of such Marketing and Advertising Materials. Approval of Marketing and Advertising Materials by the Reed's-designated members of the Development Committee shall be deemed approval of the Marketing and Advertising Materials by Reed's. Reed's acknowledges that time is of the essence with respect to approval of the Marketing and Advertising Materials, and if Reed's has not approved or rejected any Marketing and Advertising Materials submitted to the Development Committee within fifteen (15) business days, the submission shall be deemed approved by Reed's. No Marketing and Advertising Materials utilizing the Reed's Brand shall be released without such prior approval (or deemed approval) by Reed's. Company shall be responsible for ensuring that all Marketing and Advertising Materials developed by Company comply with Applicable Laws and Regulations, provided that Company shall be entitled to rely upon the accuracy of any claims associated with the Reed's Brand that is an element of any Marketing and Advertising Materials.

3.4 Compliance with Law. Reed's will market, advertise, or promote the Reed's Brand in compliance with applicable law. Each party will consult with the other in good faith with respect to any proposed cross-category marketing, advertising, or promotional efforts by either or both parties, in order to ensure that Reed's marketing, advertising, and promotion of the Reed's Brand does not cause any violation of Applicable Laws and Regulations with respect to the marketing, advertising, promotion, sale and distribution of the Products.

#### **4. Manufacturing.**

4.1 Facilities; Supplies. Company will manufacture the Products at its licensed facilities in Hood River, Oregon, or such other facility as the Company may designate with the prior written approval of Reed's, not to be unreasonably conditioned, withheld, or delayed. With the prior written consent of Reed's, not to be unreasonably conditioned, withheld, or delayed.

Company shall have the right to appoint one or more co-packers to assist in the manufacture, sale and distribution of the Products. Company shall manufacture the Products, or (as applicable) cause the Products to be manufactured by an approved co-packer, in accordance with the specifications set forth in Exhibit B. Company shall implement quality assurance processes and procedures in accordance with all Applicable Laws and Regulations at each facility where the Products are manufactured (each, a "**Facility**"). If the certification or licensing of a Facility, whether owned and operated by Company or a co-packer, is suspended, revoked, or canceled, Company will notify Reed's and will suspend the manufacture, processing, packaging or production of Products at that Facility until the problem is resolved to Reed's reasonable satisfaction and such Facility is again certified or licensed as required.

4.2 Inspection Rights; Reports. Company shall, on reasonable request, make available for physical inspection by Reed's or Reed's designated representative at any time during regular business hours each Facility and the Products held therein as well as the equipment, supplies, work-in-progress, inventories of Products, books and records related to the performance of Company under this Agreement.

4.3 Regulatory Inspections. Company shall notify Reed's of any visit to a Facility by an official or regulatory agency, or Company's receipt of communication (written or oral) from an official or a regulatory agency, whenever there is a reasonable possibility that such visit or communication may materially affect Reed's Intellectual Property or the Products. The Parties shall cooperate in the investigation and resolution of any of these matters and any out-of-pocket expense in connection with such investigation and resolution shall be paid by Company, except to the extent such arising solely out of issues deriving from the Reed's Brand.

4.4 Competitive Products. Company covenants and agrees that, except for its performance under this Agreement, it shall not, directly or indirectly, for its own account or for the account of any third party, sell, subcontract, supply, manufacture or produce, or enter into any agreement with any third party to sell, subcontract, supply, manufacture or produce, at any time during the Term and for a period of ending on the first anniversary of the expiration or termination of this Agreement, any products which are the same as (or otherwise similar to) the Products, including without limitation, any products positioned as a mule or hard ginger seltzer (collectively, "**Competitive Products**").

## 5. Royalties; Pricing, Minimum Sales and Costs.

5.1 Royalties. As compensation to Reed's for the rights granted to Company under this Agreement, Company agrees to pay to Reed's an earned royalty for Products sold in the Territory at the rates set forth in Exhibit C (collectively, "**Royalties**"). The Royalties shall be payable to Reed's each calendar quarter, within thirty (30) days following the conclusion of each calendar quarter during the Term. All Discounts redeemed by Company following payment to Reed's of applicable earned Royalties for any given quarter of the Term (for which such Discounts applied) shall be applied against the next payment of Royalties due to Reed's.

5.2 Pricing. Company shall develop a wholesale pricing and sales plan for the Products (which shall be submitted to Reed's for its written approval prior to the sale of Products) for each year during the Term, including quarterly sales forecasts, and estimated Royalties. Company and Reed's will meet at least quarterly to discuss such budget, pricing, and sales plans and results for the Products.

5.3 Alternate Distributors. Reed's and Company shall cooperate as necessary to identify optimal distributors in certain regions of the Territory where Company does not have a strong presence and where Reed's may have relationships with other distributors who could distribute the Products. Reed's acknowledges that the distribution of alcohol beverage products is highly regulated and subject to various state statutes, regulatory mechanisms, and contracting norms which may restrict the ability to transition or re-align the distribution of Products in any portion of the Territory once Products are initially shipped to a particular distributor, or a distributor is otherwise formally appointed, for such respective portion of the Territory.

5.4 Minimum Sales. Company will use commercially reasonable efforts to maximize sales of the Products. The parties anticipate minimum Royalties from sales of the Products during the Term as described in Exhibit C ("**Annual Minimum Royalty**"). In the event that the Annual Minimum Royalty is not paid to Reed's in First Year and/or the Second Year (as those terms are defined on Exhibit C), Company may choose, in its sole discretion, to make up the shortage by paying to Reed's a lump sum cash payment (at the time the last quarterly payment for such year is due) in the amount of the difference between the applicable Annual Minimum Royalty and the actual Royalties paid (the "**Lump Sum Minimum Royalty Payment**") for the First Year and the Second Year, as applicable. Reed's may elect to terminate this Agreement in accordance with the terms of Section 8 if (i) Company does not pay the Annual Minimum Royalty in the First Year or the Second Year and does not elect to make the applicable Lump Sum Minimum Royalty Payment; or (ii) in the Third Year or any Subsequent Year (as those terms are defined on Exhibit C) in which Company does not achieve the Annual Minimum Royalty.

5.5 Costs. Except as otherwise provided in this Agreement, all manufacturing, packaging, marketing, sales and distribution costs for the Products shall be at Company's sole expense, except as such costs relate to the involvement of Reed's personnel and contractors.

## **6. Reports, Records, and Payment of Royalties.**

6.1 Reports. Company agrees to submit a reasonably detailed written report to Reed's with each quarter's payment of Royalties due hereunder, stating in each such report: (a) the Gross Sales Revenue, Net Revenue, Discounts and excise tax, all as applicable, and calculation of earned Royalties due for all Products sold pursuant to Section 5 during the previous calendar quarter; and (b) any customer or consumer feedback received by Company during the previous calendar quarter. The obligation to make written reports under this Agreement shall begin with the calendar quarter in which Company first makes a commercial sale of Products, and shall continue thereafter during the Term.

6.2 Records. During the Term and for two years thereafter, Company shall maintain records in sufficient detail and, upon reasonable notice, shall allow Reed's or its third party auditor to examine Company's books and records pertaining to the Products. Such examinations shall occur only during business hours following written notification to Company and shall be for the purpose of verifying the calculation of earned Royalties due under this Agreement. If any such examination reveals an underpayment, Company shall within ten (10) business days pay to Reed's the underpaid amount. If any such examination reveals an overpayment, such amount shall be credited against Royalties to become due to Reed's. Any information provided to Reed's or its accountants pursuant to this Section 6.2 shall be treated as Confidential Information (as defined below) of Company, to be used only for the purpose of the examination in accordance with this Section 6.2. If an audit discloses that Company has not properly accounted for and paid Royalties to Reed's and the amount not properly accounted for exceeds 3% of the Royalties paid, then the reasonable cost of such audit shall be paid by Company. If, however, the audit discloses that Company has accounted for Royalties as provided or the amount not properly accounted for is less than 3% of the Commission paid, the cost of such audit shall be paid by Reed's.

6.3 Expenses and Costs. All past due sums shall bear interest at the rate of 1.5% per month until paid in full. In addition, Company shall reimburse Reed's for all expenses, costs, and attorney's fees incurred or expended by Reed's in enforcing any of its rights hereunder and/or collecting any past due sums, whether or not suit is commenced.

## **7. Representations, Warranties, Covenants, etc.**

7.1 By Company. Company represents, warrants, covenants and agrees that:

(a) Company has (i) the full right, power and authority to enter into this Agreement and to carry out its obligations hereunder; and (ii) no obligations to any other party that are inconsistent with its obligations under this Agreement;

(b) Company shall at all applicable times hold the proper TTB and applicable state alcohol beverage regulatory authority licenses and permits and all other applicable permits and licenses necessary to lawfully produce and sell, as applicable, the Products in the United States, and to export products to Canada, in accordance with this Agreement;

(c) Company Intellectual Property that is used by Company with respect to the Company's manufacturing, packaging, promoting, selling, and distributing the Products (including the Neutral Alcohol Beverage Base), does not and will not infringe, misappropriate or violate the rights of any third person;

(d) the Products shall (i) be in conformance with the Specifications; (ii) be in conformance with the Commercial Scale Samples; and (iii) not be adulterated or misbranded within the meaning of Applicable Laws or Regulations within such portion of the Territory in which the Products are sold by the Company and shall otherwise be in compliance with all Applicable Laws and Regulations;

(e) the Products shall be of good and merchantable quality;

(f) the Products shall be free from defects and fit for intended purpose, and able to pass without objection in trade; and

(g) Company shall comply with all Applicable Laws and Regulations regarding employment practices, health and safety, and product safety and shall maintain (or cause to be maintained) adequate security at each Facility.

7.2 By Reed's. Reed's represents and warrants that:

(a) Reed's has the full right, power and authority to enter into this Agreement and carry out its obligations hereunder, including granting to Company the exclusive rights in the License Marks being licensed under this Agreement.

(b) Company's use of the Licensed Marks and Reed's Brand as authorized hereunder will not infringe, misappropriate or violate the rights of any third person.

(c) Reed's has no knowledge or notice of any actions pending or threatened which may impair Reed's right to grant the rights licensed under this Agreement.

(d) The rights licensed under this Agreement do not violate any obligations of Reed's to any other party.

**8. Termination.** The rights and licenses granted under this Agreement shall remain in force and effect for the duration of the Term, unless this Agreement is terminated early in accordance with either party's termination rights as set forth below.

8.1 By Reed's.

(a) Subject to the conditions of Section 5.4 above, Reed's may terminate this Agreement on thirty (30) days' notice if Company does not meet the Annual Minimum Royalty set forth in Exhibit C for the First Year or any subsequent year of the Term.

(b) Reed's shall have the right to terminate this Agreement immediately in the event of a change of control or sale of substantially all of the assets of Company involving a Reed's competitor identified in Exhibit D.

8.2 By Either Party. Either party shall have the right to terminate this Agreement:

(a) Immediately upon written notice to the other party in the event the other party is adjudged bankrupt, makes a general assignment for the benefit of creditors, has a receiver or trustee appointed for the benefit of its creditors, or files a voluntary petition in bankruptcy;

(b) upon thirty (30) days written notice to the other party in the event the other party materially breaches or defaults in the performance of its obligations under the terms of this Agreement, and fails to cure such breach or default within such 30-day period; or

(c) without limiting Reed's right pursuant to Section 8.1(b), upon twelve (12) months' prior written notice to the other party in the event of a change of control or sale of substantially all of the assets of the other party to a third party who is as of the date of this Agreement, or becomes during the Term, a material competitor of the terminating party.

8.3 Post-Termination Rights Upon any termination of this Agreement, other than a termination by Reed's pursuant to Section 8.2 (b) as a result of the Company's breach or default of any Sections 4.1 through 4.4, Sections 7.1(d) through (f), then Company shall have the right to continue to manufacture the Products for up to a 24-month period following such termination, at fair market rates with respect to comparable products, on terms and conditions to be reasonably negotiated in good faith and agreed to by the parties ("**Post-Termination Co-Packing**"). It is understood and agreed by Company that from and after the termination of this Agreement, all of Company's rights to use the Reed's Brand and Licensed Marks shall cease, except as necessary for Post-Termination Co-Packing or as otherwise expressly provided herein. If there is a termination subject to this Section 8.3, but a Post-Termination Co-Packing agreement is not reached, then Reed's shall be obligated to purchase or reimburse Company, at its cost, for up to for up to sixty (60) days inventory of Company supplies of ingredients and packaging materials which were reasonably procured by Company in good faith in anticipation of the continued manufacturing of Products.

8.4 Manufactured Products. Any Products that may have been manufactured Company prior to the termination of this Agreement, or which were in the process of manufacture by Company, or are required to fill purchase orders from customers accepted by Company on or prior to the date of termination, may be sold by Company during the three (3) month period following the date of termination, provided that Company shall continue to pay to Reed's earned Royalties with respect to such sales at the rates and in the manner specified in Section 5 of this Agreement. Following the 3-month grace period, if exercised, Reed's shall have the right, but not the obligation, to purchase any Products remaining in Company's inventory at Company's actual cost plus 25%. Any Products not purchased by Reed's after the end of such 3-month post- termination period pursuant to this Section 8.4 will be destroyed by Company, unless otherwise then agreed between Reed's and Company.

8.5 Earned Royalties. Termination of this Agreement for any reason shall not terminate Company's obligation to pay all quarterly earned Royalties which accrue up to the date of such termination. Company's obligation to report Royalties due and submit its books and records for inspection as provided in Section 6 shall continue until Company's royalty obligations have been fully determined and discharged by proper payment.

## **9. Indemnification and Limitation on Liability.**

9.1 By Company. Company shall defend, indemnify and hold Reed's, its affiliates and their authorized representatives, and their respective directors, officers, stockholders, members, managers, employees, agents and assigns, harmless against all causes of action, claims, suits, proceedings, costs, damages, losses and expenses (including reasonable attorneys' fees) and judgments incurred or sustained by Reed's or such persons, or claimed or sustained by third parties, arising out of: (a) any negligence or intentional wrongdoing by Company or any of its employees, contractors or agents; (b) the breach by Company of its representations and obligations under this Agreement; or (c) any third party claims for damage arising from the Company's manufacture, handling, or distribution of the Products, including but not limited to claims of infringement with respect to Company's Intellectual Property or product liability claims.

9.2 By Reed's. Reed's shall defend, indemnify and hold Company, its affiliates and its authorized representatives (including its sublicensees), and their respective directors, officers, stockholders, members, managers, employees, agents and assigns, harmless against all causes of action, claims, suits, proceedings, costs, damages, losses and expenses (including reasonable attorneys' fees) and judgments incurred or sustained by Company or such persons, or claimed or sustained by third parties, arising out of: (a) any claim that the Reed's Brand or any of the Licensed Marks or Reed's Intellectual Property infringes the rights of a third party; (b) any negligence or intentional wrongdoing by Reed's or any of its employees or agents in connection with their obligations under this Agreement; or (c) the material breach by Reed's of its representations and obligations under this Agreement.

9.3 Limitation of Liability; Disclaimer of Warranties. EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS OF COMPANY SET FORTH IN SUBSECTION (D) OF SECTION 9.1 CONCERNING CLAIMS BY THIRD PARTIES, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

## 10. Confidentiality.

10.1 Non-Disclosure. During the course of performance of this Agreement, each party may disclose certain Confidential Information to the other party. The receiving party shall maintain the secrecy of all Confidential Information of the disclosing party, and shall not use, disclose or otherwise exploit any Confidential Information of the disclosing party for any purpose not specifically authorized by this Agreement. Each party understands and agrees that the other party will suffer irreparable harm in the event that the receiving party breaches any of its obligations under this Section 10 and that monetary damages will be inadequate to compensate the non-breaching party for such breach. In the event of a breach or threatened breach of any of the provisions of this Section 10, the non-breaching party, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach by the other party.

10.2 Confidential Information. As used herein, the term “**Confidential Information**” shall mean all information of any kind, whether written or oral, regarding a party or any of its businesses or operations that is proprietary and not generally known or used by others and which gives, or may give, such party an advantage over its competitors, including, without limitation, the Recipes in the case of Reed’s and other information concerning such party’s products, formulas, recipes, services, data, applications, business plans, strategies, business partners and alliances, finances, operations, assets, suppliers and customers, whether such information is obtained before or after the date of this Agreement. Notwithstanding the foregoing, Confidential Information shall exclude information: (a) available to the public other than by a breach of this Agreement; (b) rightfully received by the receiving party from a third party not in breach of a contractual, fiduciary or other obligation of confidentiality; (c) known to the receiving party at the time of disclosure as evidenced by the written records of the receiving party at the time of disclosure; or (d) produced in compliance with any law, rule, regulation or court or administrative order; provided, however, that the receiving party gives the disclosing party reasonable notice that such Confidential Information is being sought by a third party so as to afford the disclosing party the opportunity to limit or prevent such disclosure. The provisions of this Section 10 shall survive termination or expiration of this Agreement and the obligations regarding trade secrets, in particular, will continue for trade secrets for so long as the information constitutes a trade secret under applicable law.

**11. Insurance.** While this Agreement remains in effect and for a period of not less than the later of two years thereafter, Company shall obtain and maintain comprehensive general liability insurance (including for acts, omissions and products liability) with a minimum combined single limit in the amount of not less than \$2,000,000 per occurrence and \$10,000,000 in the aggregate for bodily harm or personal injury to, illness of, or death of persons and damage to property occurring as a result of the activities to be conducted and the Products to be produced and sold under this Agreement. Company shall also maintain recall insurance in the amount of not less than \$2,000,000 per occurrence. All such insurance pursuant to this Section 11 shall name Reed’s as an additional insured. Upon request, Company will furnish to Reed’s one or more current certificates evidencing that the insurance required herein has been obtained and is in full force and effect, and that Reed’s has been named as an additional insured. Such insurance shall not be canceled until at least thirty (30) days’ written notice has been given to Reed’s. Company shall maintain the above-referenced insurance carrying a Best’s rating of at least ‘A-’. Company shall also maintain the statutory requirements for Workers’ Compensation insurance.

## **12. Recalls; Complaints.**

12.1 Protocol. If either party becomes aware of any incident involving potential contamination of any Product, such party shall provide immediate telephone notice to the other party, and Company shall identify and remove from sale any Products suspected of contamination. The parties agree to cooperate fully and to provide all information necessary for the parties to make a determination as to whether a recall or market withdrawal of the Product is necessary. The parties agree to cooperate with such a recall or market withdrawal in all aspects, including, but not limited to, assistance with tracing Products, locating Products, producing records and documents, coordinating returns of Products, disposing of Products, and communicating with government authorities.

12.2 Recalls. In the event of a recall or market withdrawal, Reed's and Company shall promptly consult with one another to develop a joint plan reasonably acceptable to each party for the manner of implementing the recall or withdrawal. Company will carry out the recall or replacement in accordance with the joint plan, in compliance with applicable laws and regulations, in as expeditious a manner as feasible, and in such a way as to protect customers and preserve the reputation of Company, Reed's, the Products, and the Reed's Brand. Company shall be responsible for all costs and expenses of either party associated with any recall or withdrawal, including but not limited to customer notification, refunds to customers, transportation costs, the cost of employee's time, and lost profits. The obligations in this Section 12 will be in addition to any other rights and remedies to which the parties may be entitled to by law or equity.

12.3 Customer Complaints and Inquiries. Company shall provide all assistance reasonably requested by Reed's in investigating customer and consumer complaints regarding any Product. Company shall be responsible for responding to all material customers' and consumers' inquiries and/or complaints relating to the Products and the recordkeeping relating thereto.

## **13. Miscellaneous.**

13.1 Press Releases; Publicity. Reed's may issue or cause the publication of any press release or other public announcement with respect to this Agreement or the relationship of the parties, subject to Company's prior approval of any such press release or other public announcement which shall not be unreasonably withheld, conditioned or delayed, it being understood that such consent shall not be required in the case of any public announcement required by any law, regulation, regulatory body or the rules of any exchange to which Reed's is or may become subject. Company shall not publicly identify Reed's or use Reed's name in any manner in connection with this Agreement without Reed's prior written approval.

13.2 Independent Contractors. Company and Reed's agree that neither party has authority to bind the other party as its agent. Company and Reed's recognize and agree that Company is not an employee of Reed's and is furnishing services as an independent contractor. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between Reed's and Company. Neither party shall have the right to bind the other party to any obligations to third parties.

13.3 Assignment. Company may not assign or transfer its rights or obligations under this Agreement, whether by operation of law, contract or otherwise, without the prior written consent of Reed's, which shall not be unreasonably withheld (it being understood that a purported transfer to a Reed's competitor listed or referred to on Exhibit D hereof is a reasonable basis for withholding consent). This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

13.4 Governing Law; Venue. This Agreement shall be governed by, and any dispute arising hereunder shall be determined in accordance with, the laws of State of New York (without giving effect to conflict of laws principles) including all matters of construction, validity and performance. The parties agree that any claim or dispute arising under this Agreement shall be resolved by a court located in New York City, New York.

13.5 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "**Impacted Party**"). The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable and to the greatest extent possible after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 13.5, either party may thereafter terminate this Agreement upon thirty (30) days' written notice.

13.6 Integration, Severability and Amendment. This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. This Agreement will be deemed severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or any other term herein. This Agreement may not be amended or otherwise modified except in a written agreement signed by each party.

13.7 Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of either party to exercise promptly any right, power or privilege granted by this Agreement, or to require strict performance of any obligation undertaken by the other party pursuant to this Agreement, will not be deemed to be a waiver of such right, power or privilege or of the right to demand subsequent performance of any and all such obligations undertaken by the other party.

13.8 Notice. Any notice, request or demand to be made under this Agreement shall be in writing and shall be deemed to have been duly made (a) upon delivery, if delivered personally (by courier service or otherwise), as evidenced by written receipt or other written proof of delivery (which may be a printout of the tracking information of a courier service that made such delivery), or (b) five (5) days after deposit in the mail, if sent by certified or registered mail with return receipt requested, postage prepaid, addressed to the party for whom intended at the address listed on the signature page. A party may change its address for the purposes of this Section 13.8 by written notice hereunder given to the other party.

13.9 Further Documentation. Each party agrees, at the reasonable request of the other, to promptly execute and deliver all such further documents, and to promptly take or forbear from all such action, as may be reasonably necessary or appropriate in order to more effectively confirm or carry out the provisions of this Agreement.

13.10 Survival. Sections 2, 8, 9, and 10-13 of this Agreement shall survive the termination or expiration of this Agreement. To the extent that Company receives any trade secrets of Reed's, Company's obligation to protect such trade secrets and abide by the terms of Section 10 shall survive for so long as such information is a bona fine trade secret pursuant to the laws of the governing jurisdiction identified in Section 13.4.

13.11 Remedies. All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. The parties acknowledge that any material breach, including without limitation the disclosure of Confidential Information, will cause irreparable injury. In addition to any other legal or equitable remedies that may be available, either party will be able to obtain immediate injunctive relief in the form of a temporary restraining order, preliminary injunction or permanent injunction against the other party to enforce the terms of this Agreement.

13.12 Fees and Expenses. Each party shall be responsible for its own fees and expenses in connection with the preparation and execution of this Agreement.

13.13 Headings. The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

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

*[Signature page follows]*

The parties set forth below have executed this Agreement as of the Effective Date.

**REED'S:**

**Reed's, Inc.**

By: /s/ John Bello

Name: John Bello

Title: CEO

Address:

Reed's, Inc.  
Attn: John Bello  
201 Merritt 7  
Norwalk, CT 06851

**COMPANY:**

**B C Marketing Concepts Inc. dba Full Sail Brewing Company**

By: /s/ Cory Comstock

Name: Cory Comstock

Title: CEO

Address:

B C Marketing Concepts Inc. dba Full Sail  
Brewing Company  
Attn: Cory Comstock  
506 Columbia Street  
Hood River, OR 97031

Amended and Restated Manufacturing and Distribution Agreement – Signature Page

## Exhibit A

### Licensed Marks

NAME	Registration No.	Registration Date	Serial No.	Class	Goods/Service	Current Owner
REED'S	5856872	2019/09/10	88320956 (filed 2/29/19)	032	Ginger ale, Ginger bear, Soft drinks, namely, sodas	Reeds, Inc.
Reed's Craft Ginger Mule - LOGO						
Reed's Banner- LOGO						
America's #1 Ginger Beer						
Reed's Craft Ginger Beer						
Reed's Craft Ginger Beer - LOGO						
Ready for Real Ginger?			88296996 (filed 2019/02/11)	032	ginger beer	Reeds, Inc.

Amended and Restated Manufacturing and Distribution Agreement - Exhibit A

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**Exhibit B**

**Products and Specifications**

1. Ready-to-drink Mule: Specifications to be determined by the Development Committee
2. Ready-to-drink Hard Ginger Seltzer: Specifications to be determined by the Development Committee

Amended and Restated Manufacturing and Distribution Agreement - Exhibit B

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**Exhibit C**

**Royalty Schedule**

**Royalty Rates**

<b><u>Sales Tier*</u></b>	<b><u>Amount of Product Sales by Case Per Calendar Year</u></b>	<b><u>Royalty Rate</u></b>
Tier A	The first 500,000 cases per year	The greater of 8% on Net Revenue or \$1.76 per case
Tier B	All case sales above 500,000 per year	The greater of 6% on Net Revenue or \$1.32 per case
Costco San Diego**	All case sales to the applicable distributor for San Diego and depleted by such distributor to Costco San Diego during for the first 12 months of the Term	12% of Net Revenue**

\*"Tier A" and "Tier B" sales shall apply to mean all customers in the U.S. or Canada, excluding sales to the applicable distributor for San Diego and depleted by such distributor to Costco San Diego during the first 12 months of the Term.

\*\*Following the first twelve months of the Term, the royalty rate for subsequent sales to Costco San Diego will be included with the Tier A and Tier B sales tier, per the amount of applicable case sales for such each year.

**Minimum Royalties**

	<b><u>Time Period</u></b>	<b><u>Minimum Royalty Amount (\$ or Formula)</u></b>
<b>"First Year"</b>	Effective Date through December 31, 2020.	\$250,000
<b>"Second Year"</b>	January 1, 2021 through March 30, 2022.	\$800,000
<b>"Third Year"</b>	April 1, 2022 through March 30, 2023.	\$1,200,000
<b>"Subsequent Years"</b>	Each twelve month period beginning on April 1, 2023 and ending on each March 30 of the subsequent calendar year.	5% increase in each calendar year over the prior calendar year's minimum royalty amount

**Exhibit D**

**Reed's Competitors**

- Fever Tree
- Bundaberg
- Goslings
- Q Drinks
- Boylans
- Jones Soda
- Any other entity making or selling a ready-to-drink mule or hard ginger seltzer product (unless such entity is acknowledged in writing, in advance, by Reed's as not a competitor for the purposes of this Agreement).

Amended and Restated Manufacturing and Distribution Agreement - Exhibit D

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## Section 5: EX-10.4

### RECIPE DEVELOPMENT AGREEMENT

This Recipe Development Agreement (this “**Agreement**”) is made between Reed’s, Inc., a Delaware corporation (“**Reed’s**”) and B C Marketing Concepts Inc., dba Full Sail Brewing Company, an Oregon corporation (“**Company**”), effective as of October 11, 2019 (the “**Effective Date**”).

#### RECITALS

Company is engaged in the business of developing recipes for and manufacturing alcohol beverage products. Reed’s is engaged in the business of developing recipes for ginger-based non- alcohol beverage products. Reed’s desires to engage Company, and Company desires to be engaged, to participate and assist in the development of formulas for ginger-based flavored alcohol beverage products for Reed’s (the “**Products**”) as identified in [Exhibit A](#).

#### AGREEMENT

The parties agree as follows:

**1. Definitions.** Unless otherwise defined in this Agreement, words with initial capitalized letters shall have the meanings assigned to such words in this [Section 1](#):

(a) “**Applicable Laws and Regulations**” shall mean any law, statute, rule, regulation, ordinance or other binding pronouncements of any duly authorized court, tribunal, arbitrator, agency, commission, official or other instrumentality of any federal, state, province, county, city or other political subdivision (domestic or foreign) having the effect of law in the United States, any foreign country or territory or any domestic or foreign state, province, county, city or other political subdivision applicable to the Company or its business.

(b) “**Company Intellectual Property**” means all Intellectual Property that: (i) was owned or developed by Company prior to the execution of this Agreement; and (ii) is or was independently developed or acquired by Company without contribution or assistance from Reed’s, Reed’s Confidential Information, or Reed’s Intellectual Property. Company Intellectual Property includes but is not limited to Company’s know-how and independently developed recipes and alcohol beverage production processes, including the Company’s proprietary composition of or recipe for the neutral alcohol beverage base that contributes alcohol to the Products (“**Neutral Alcohol Beverage Base**”).

(c) “**Deliverables**” means (a) any Recipe, (b) documentation, samples, prototypes and other tangible embodiments of or descriptions of Recipes, and (c) any other Intellectual Property created with during the term of this Agreement and required to be disclosed to the Development Committee as contemplated by [Section 1\(b\)](#) hereof.

(d) “**Intellectual Property**” means any and all domestic and international rights in and to: (i) trademarks, service marks, trade dress, logos, trade names and Internet domain names, together with all goodwill associated therewith; (ii) patents, patent disclosures, patentable subject matter, inventions, any improvements thereto and know-how; (iii) copyrights, copyrightable works, derivative works thereof and moral rights; (iv) trade secrets and confidential information; (v) other intellectual proprietary property (of every kind and nature and however designated), whether arising by operation of law, contract, license or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing now or hereafter in force or hereafter acquired or adopted.

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(e) “**Recipe**” means the ingredients and methods of combining and processing ingredients for the Products, provided that a Recipe will not include the composition of or recipe for the Neutral Alcohol Beverage Base (it being understood that the amount of Neutral Alcohol Beverage Base and the process for combining and processing it with other ingredients shall be included in the Recipe).

(f) “**Reed’s Intellectual Property**” means all Intellectual Property that: (i) was owned or developed by Reed’s prior to the execution of this Agreement; (ii) was or is independently developed by Reed’s without contribution or assistance from Company or Company’s Intellectual Property; and (iii) the Recipe.

(g) “**Specifications**” means the specifications for the Products to be developed by the Development Committee (as defined in [Section 3](#)).

**2. Consideration.** In exchange for Company’s contributions and obligations under this Agreement, Reed’s grants Company the exclusive right to manufacture, package, promote, sell and distribute the Products (if and to the extent approved by the Development Committee), subject to the terms and conditions of a separate Manufacturing and Distribution Agreement to be entered into by the parties concurrently with this Agreement, as it may be amended, modified, supplemented or restated from time to time (the “**Manufacturing and Distribution Agreement**”). Company shall be responsible for all costs relating to the development of the Recipes and Deliverables, except for costs and expenses relating to the involvement of Reed’s personnel and contractors.

**3. Development Committee.** Representatives of Company and Reed’s, as identified in [Exhibit B](#), shall meet regularly to discuss and approve development milestones for the Products, the Recipes, Deliverables, Specifications and other topics as identified in [Exhibit B](#) (the “**Development Committee**”). The final Recipes, Deliverables and Specifications for the Products must be agreed to in writing by at least one member of the Development Committee from each of Reed’s and Company.

#### **4. Rights and Obligations.**

(a) The parties will collaborate to develop commercial production-ready Products according to the Specifications as may be developed by the Development Committee. Reed’s shall have the right to visit the facilities used by Company to develop the Recipes and Deliverables, at such times as may be reasonably agreed to in advance by the parties. Company shall perform the work in connection with this Agreement in a timely, professional and workmanlike manner consistent with industry standards. Each party shall ensure that all persons performing work under this Agreement on its behalf shall have the requisite experience, training, skill and other qualifications needed to develop the Recipes, Deliverables and Specifications. Company shall keep the Development Committee informed of the progress of the development of the Recipes and Deliverables and such other matters as any member of the Development Committee may reasonably request from time to time.

(b) Company shall promptly disclose to the Development Committee any prospective or actual new Intellectual Property related to the Products or Product-specific production processes, whether developed solely by Company or jointly by the Company and Reed's, except with regard to the Neutral Alcohol Beverage Base, and except with regard to the Company's general know-how and independently developed production processes not specifically related to the Products.

## **5. Representations and Warranties.**

(a) By Company. Company represents and warrants that (i) Company has obtained all authority, permits, licenses and approvals necessary to enter into and perform its obligations under this Agreement; (ii) the execution and delivery by Company of this Agreement and the performance of its obligations under this Agreement does not and will not violate the terms of any other contract, agreement, obligation or understanding of Company or any Applicable Laws and Regulations; (iii) the Deliverables will conform to the Specifications; and (iv) the Company's Intellectual Property does not infringe or violate the Intellectual Property of any third parties.

(b) By Reed's. Reed's represents and warrants that (i) Reed's has obtained all authority and approvals necessary to enter into and perform its obligations under this Agreement; (ii) the execution and delivery by Company of this Agreement and the performance of its obligations under this Agreement does not and will not violate the terms of any other contract, agreement, obligation or understanding of Reed's or any law or regulation applicable to Reed's; and (iii) the Reed's Intellectual Property does not infringe or violate the Intellectual Property of any third parties.

## **6. Intellectual Property.**

### (a) Ownership of Intellectual Property.

(i) Company will create and provide to Reed's the Deliverables. Reed's will exclusively own all Deliverables. Company will and hereby does, without further consideration, irrevocably assign to Reed's any and all worldwide right, title or interest that Company may now or hereafter possess in or to the Deliverables in perpetuity (or the maximum period permitted by Applicable Laws and Regulations) and Reed's accepts such assignment. Company will execute and deliver documents reasonably requested by Reed's to register its Intellectual Property in the Deliverables.

(ii) Company acknowledges that all rights of ownership of Reed's Intellectual Property, Deliverables and the goodwill symbolized thereby shall belong exclusively to and inure to the benefit of Reed's. Company shall not at any time acquire any rights, title or interest in Reed's Intellectual Property or Deliverables. Company agrees that it will not at any time contest the ownership or validity of any Reed's Intellectual Property or Deliverables, nor register or attempt to register any rights with respect to Reed's Intellectual Property, nor do anything that would jeopardize or diminish Reed's rights to or the value of Reed's Intellectual Property or Deliverables.

(iii) Reed's acknowledges that all rights of ownership of Company's Intellectual Property and the goodwill symbolized thereby shall belong exclusively to and inure to the benefit of Company. Reed's shall not at any time acquire any rights, title or interest in Company's Intellectual Property. Reed's agrees that it will not at any time contest the ownership or validity of any Company Intellectual Property, nor register or attempt to register any rights with respect to Company Intellectual Property, nor do anything that would jeopardize or diminish Company's rights to or the value of Company Intellectual Property.

(b) Work Product. Company acknowledges and agrees that all Intellectual Property created by Company, its affiliates, representatives, or agents in connection with or resulting from any work or services related to the Products, including the Deliverables (“**Work Product**”), but excluding the Neutral Alcohol Beverage Base and excluding the Company’s general know-how and independently developed production processes not specifically related to the Products, have been specially ordered and commissioned by Reed’s, are works-made-for-hire from the moment of creation and that all such Work Product is and will be the sole and exclusive property of Reed’s. To the extent not a work-for-hire, Company, its employees, subcontractors and agents hereby sell, assign and transfer to Reed’s all right, title and interest in and to the Work Product, including without limitation, all rights to Intellectual Property therein. Company agrees on behalf of itself, its employees, subcontractors and agents, not to file for or register any patents, trademarks, or copyrights in or to the Work Product. No rights of any kind in the Work Product are reserved to or by Company or will revert to Company. To the extent permitted by Applicable Laws and Regulations, Company forever waives and agrees never to assert any “moral rights” in any Work Product or any derivative of any Work Product. Company shall, without further compensation, execute and deliver such instruments and take such action as may be requested by Reed’s to perfect, protect, enforce or evidence Reed’s rights in the Work Product, Products and Deliverables and to carry out the assignments and waivers in this Section 6.

(c) Use. Company shall not use the Work Product, Products or Deliverables during the term of this Agreement or after, in perpetuity, for any purpose whatsoever other than performing Company’s obligations under this Agreement. The Deliverables shall be considered to be Confidential Information (as defined below) of Reed’s. This Section 6 shall survive termination or expiration of this Agreement.

**7. Confidentiality.** Each of Reed’s and Company (a “**Receiving Party**”) shall hold in confidence and not make any commercial or other use of any or all Confidential Information conveyed, acquired or learned from the other party (the “**Disclosing Party**”) at any time, except in association with this Agreement. Except as otherwise expressly permitted herein, Receiving Party shall not disclose such information to third persons without the prior written consent of the Disclosing Party. Receiving Party shall limit access to the Confidential Information to those of its directors, officers, employees, contractors, agents, attorneys and accountants (the “**Representatives**”) with the need to know the same and shall advise such Representatives of, and hold them to, Receiving Party’s obligations under the terms of this Section 7. Receiving Party and its Representatives shall be permitted to disclose Confidential Information as required by law, including to any judicial, regulatory, administrative or other governmental body (by interrogatories, investigative demands, requests for information or documents, subpoena, or other similar process), but must (to the extent legally permissible) promptly notify the disclosing party of the existence, terms and circumstances surrounding such requirement and give the disclosing party a reasonable opportunity to obtain a protective order or other appropriate remedy to resist or narrow such disclosure. “**Confidential Information**” means all information of Disclosing Party that is disclosed orally or in writing by Disclosing Party to Receiving Party that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, would be understood by the parties, exercising reasonable business judgment, to be confidential, or is not generally known to the public, whether of a business, technical, or other nature, and including, without limitation, designs, plans, drawings, know-how, recipes, and marketing and business plans. Upon the expiration or earlier termination of this Agreement, Receiving Party shall return to Disclosing Party all of Disclosing Party’s Confidential Information or shall destroy the same at the option of Disclosing Party. The provisions of this Section 7 shall survive termination or expiration of this Agreement. The obligations in this Section 7 regarding trade secrets, in particular, will continue for so long as the information constitutes a trade secret under applicable law. If an unauthorized use or disclosure of a Disclosing Party’s Confidential Information occurs, the Receiving Party shall promptly notify the Disclosing Party, and the Disclosing Party may take, at the Receiving Party’s expense, all steps which are necessary to recover Confidential Information disclosed or used in breach of this Agreement and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief.

## 8. Term; Termination.

(a) Term. The term of this Agreement shall commence on the Effective Date and shall continue for the longer of the first anniversary of the Effective Date or the duration of the Manufacturing and Distribution Agreement (the “**Term**”). The Term may be extended by written agreement of the parties.

(b) Early Termination. Either party may terminate this Agreement at any time if any of the following occur: (i) the other party fails to comply with any requirements or obligations under this Agreement, and such non-compliance is not cured within 30 days following written notice from the other party identifying the non-compliance; (ii) the other party becomes insolvent, reorganizes or liquidates; (iii) the other party makes any assignment for the benefit of Company’s creditors; or (iv) a receiver is appointed for Company’s property. Either party may terminate this Agreement upon written notice if the Manufacturing and Distribution Agreement terminates prior to the first anniversary of the Effective Date.

**9. Indemnification.** Each party will indemnify, defend and hold harmless the other party and its respective directors, officers, members, employees, licensees, agents and independent contractors, from and against any claim or action, liability, damages, and expense, including but not limited to attorney’s fees, arising from or resulting from (i) the negligent act or omission of the party, its employees, agents or contractors, (ii) the party’s breach of this Agreement, or (iii) the violation of any law by the party, its employees, agents, or contractors. Reed’s will indemnify, defend and hold harmless Company and its directors, officers, members, employees, licensees, agents and independent contractors, from and against any claims for the breach of the intellectual property rights of a third party based on the Reed’s Intellectual Property. Company will indemnify defend and hold harmless Reed’s and its directors, officers, members, employees, licensees, agents and independent contractors, from and against any claims for the breach of the intellectual property rights of a third party based on the Company Intellectual Property, Deliverables and Work Product, except as such claims are solely based on or limited to the Reed’s Intellectual Property.

**10. Limitation of Liability.** EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 WITH REGARD TO CLAIMS BY THIRD PARTIES, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT OR CLAIM HEREUNDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**11. Press Releases; Publicity.** Reed's may issue or cause the publication of any press release or other public announcement with respect to this Agreement or the relationship of the parties, subject to Company's prior approval of any such press release or other public announcement which shall not be unreasonably withheld, conditioned or delayed, it being understood that such consent shall not be required in the case of any public announcement required by any law, regulation, regulatory body or the rules of any exchange to which Reed's is or may become subject. Company shall not publicly identify Reed's or use Reed's name in any manner in connection with this Agreement without Reed's prior written approval.

**12. Independent Contractors.** Company and Reed's agree that neither party has authority to bind the other party as its agent. Company and Reed's recognize and agree that Company is not an employee of Reed's and is furnishing services as an independent contractor. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between Reed's and Company. Neither party shall have the right to bind the other party to any obligations to third parties.

**13. Assignment.** Company may not assign or transfer its rights or obligations under this Agreement, whether by operation of law, contract or otherwise, without the prior written consent of Reed's, which shall not be unreasonably withheld (it being understood that a purported assignment to a Reed's competitor identified or referred to in Exhibit D of the Manufacturing and Distribution Agreement shall be considered to be a reasonable basis for withholding consent). This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

**14. Governing Law; Venue.** This Agreement shall be governed by, and any dispute arising hereunder shall be determined in accordance with, the laws of State of New York (without giving effect to conflict of laws principles) including all matters of construction, validity and performance. The parties agree that any claim or dispute arising under this Agreement shall be resolved by a court located in New York City, New York.

**15. Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "**Impacted Party**"). The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable and to the greatest extent possible after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 15, either party may thereafter terminate this Agreement upon thirty (30) days' written notice.

**16. Integration, Severability and Amendment.** This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. This Agreement will be deemed severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or any other term herein. This Agreement may not be amended or otherwise modified except in a written agreement signed by each party.

**17. Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of either party to exercise promptly any right, power or privilege granted by this Agreement, or to require strict performance of any obligation undertaken by the other party pursuant to this Agreement, will not be deemed to be a waiver of such right, power or privilege or of the right to demand subsequent performance of any and all such obligations undertaken by the other party.

**18. Notice.** Any notice, request or demand to be made under this Agreement shall be in writing and shall be deemed to have been duly made (a) upon delivery, if delivered personally (by courier service or otherwise), as evidenced by written receipt or other written proof of delivery (which may be a printout of the tracking information of a courier service that made such delivery), or (b) five (5) days after deposit in the mail, if sent by certified or registered mail with return receipt requested, postage prepaid, addressed to the party for whom intended at the address listed on the signature page. A party may change its address for the purposes of this Section 18 by written notice hereunder given to the other party.

**19. Further Documentation.** Each party agrees, at the reasonable request of the other, to promptly execute and deliver all such further documents, and to promptly take or forbear from all such action, as may be reasonably necessary or appropriate in order to more effectively confirm or carry out the provisions of this Agreement.

**20. Survival.** Sections 6, 7, 9, 10 and 14-24 of this Agreement shall survive the termination or expiration of this Agreement. To the extent that Company receives any trade secrets of Reed's, Company's obligation to protect such trade secrets and abide by the terms of Section 7 shall survive for so long as such information is a bona fide trade secret pursuant to the laws of the governing jurisdiction identified in Section 14.

**21. Remedies.** All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. The parties acknowledge that any material breach, including without limitation the disclosure of Confidential Information, will cause irreparable injury. In addition to any other legal or equitable remedies that may be available, either party will be able to obtain immediate injunctive relief in the form of a temporary restraining order, preliminary injunction or permanent injunction against the other party to enforce the terms of this Agreement.

**22. Fees and Expenses.** Each party shall be responsible for its own fees and expenses in connection with the preparation and execution of this Agreement.

**23. Headings.** The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

**24. Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Signature Page immediately follows]*

The parties set forth below have executed this Agreement as of the Effective Date.

**REED'S:**

**Reed's, Inc.**

By: /s/ John Bello

Name: John Bello

Title: CEO

Address:

Reed's, Inc.  
Attn: John Bello  
201 Merritt 7  
Norwalk, CT 06851

**COMPANY:**

**B C Marketing Concepts Inc., dba Full Sail  
Brewing Company**

By: /s/ Cory Comstock

Name: Cory Comstock

Title: CEO

Address:

B C Marketing Concepts Inc. dba Full Sail  
Brewing Company  
Attn: Cory Comstock  
506 Columbia Street  
Hood River, OR 97031

Amended and Restated Recipe Development Agreement – Signature Page

**EXHIBIT A**

**Products**

1. Ready-to-drink Mule: Specifications to be determined by the Development Committee
2. Ready-to-drink Hard Ginger Seltzer: Specifications to be determined by the Development Committee

Amended and Restated Recipe Development Agreement – Exhibit A

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## **EXHIBIT B**

### **Development Committee**

#### **Committee Members**

For Company:

- Brewmaster
- Director of Quality
- Director of Marketing

For Reed's:

- Vice President, Marketing
- Vice President, Sales
- Vice President, Operations

#### **Committee Meetings**

Until the Products are initially launched on a commercial basis, the Development Committee will confer (in person at the Company's brewery, or by telephone) at least weekly, and thereafter will confer (in person at the Company's brewery, or by telephone) at least monthly or as otherwise agreed by the Development Committee.

#### **Topics and Responsibilities**

Topics and responsibilities for each meeting will be determined by Development Committee prior to a meeting.

Amended and Restated Recipe Development Agreement – Exhibit B

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## Section 6: EX-10.5

### SEPARATION, SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

This Separation, Settlement and Release of Claims Agreement (“Agreement”) is entered into by and between Reed’s Inc., a Delaware corporation, (the “Employer”) and Valentin Stalowir (the “Employee”) (the Employer and the Employee are collectively referred to herein as the “Parties”) as of October 31, 2019 (the “Execution Date”). Employee and Employer are parties to that certain Employment Agreement dated June 28, 2017, as amended by Amendment No. 1 to Employment Agreement, dated September 29, 2019 (collectively, “Employment Agreement”). This Agreement amends, supersedes and replaces in its entirety the Employment Agreement.

The Employee’s last day of employment with the Employer is October 31, 2019 (the “Separation Date”). After the Separation Date, the Employee will not represent himself as being an employee, officer, agent or representative of the Employer for any purpose. Except as otherwise set forth in this Agreement, the Separation Date will be the employment termination date for the Employee for all purposes, meaning the Employee will no longer be entitled to any further compensation, monies, bonuses, equity awards, or other benefits from the Employer, including coverage under any benefits plans or programs sponsored by the Employer, except as specifically provided in this Agreement.

1. Return of Property. Except as specifically provided in this Section 1, by the Separation Date, the Employee shall promptly return to Reed’s any car, or other property provided to the Employee by Employer, and any other confidential or proprietary information of Employer that remains in the Employee’s possession (“Reed’s Property”); provided, however, that nothing in this Agreement or elsewhere shall prevent the Employee from retaining and utilizing documents and information relating to his personal benefits, entitlements and obligations, documents relating to his personal tax obligations. If the Employee discovers Reed’s Property in his possession after the Separation Date, he will notify Employer and promptly either deliver the same to Employer or destroy it as directed by Employer. Employee may retain Employer issued laptop, cell phone and related equipment, provided Employer may confirm deletion of Reed’s Property by inspection performed within a reasonable time following the Effective Date.

2. Employer’s Waiver and Release and Employee Representations. The Employer expressly waives and releases any and all claims, demands, causes of action, rights, damages, debts, obligations and liabilities of any kind whatsoever, whether known or unknown, that the Employer may have or have ever had against the Employee by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter that may be waived and released by law with the exception of claims arising out of or attributable to (a) events, acts or omissions taking place after the Parties’ execution of the Agreement and (b) the Employee’s breach of any terms and conditions of the Agreement. In exchange for the Employer’s waiver and release and the consideration described in Section 3, which the Employee acknowledges to be good and valuable consideration for his obligations hereunder, the Employee hereby represents that he intends to irrevocably and unconditionally fully and forever release and discharge any and all claims he may have or have ever had against the Employer that may lawfully be waived and released arising out of or in any way related to his hire, benefits, employment or separation from employment with the Employer with the exception of claims arising out of or attributable to (a) events, acts or omissions taking place after the Parties’ execution of the Agreement and (b) the Employer’s breach of any terms and conditions of the Agreement. The Employee specifically represents, warrants and confirms that: (a) he has no claims, complaints or actions of any kind filed against the Employer with any court of law, or local, state or federal government or agency; (b) that upon receipt of the accrued obligations set forth in Section 3(a), he has been properly paid his salary for period worked for the Employer, and that all commissions, bonuses and other compensation due to him has been paid, including his final payroll check for his salary and any accrued but unused vacation/paid time off through and including the Separation Date above; and (c) has reported all injuries he has incurred during or as a result of his employment with Employer to human resources. The Employee specifically represents, warrants and confirms that he has not engaged in, and is not aware of, any unlawful conduct in relation to the business of the Employer. If any of these statements are not true, the Employee cannot sign this Agreement and must notify the Employer immediately, in writing, of the statements that are not true. Such notice will not automatically disqualify the Employee from receiving these benefits, but will require the Employer’s review and consideration.

3. Separation Benefits. In consideration for the Employee's execution, non-revocation of, and compliance with this Agreement, including the waiver and release of claims in Section 4, the Employer agrees to provide the following:

(a) *Accrued Obligations*. On the Separation Date, Employer shall pay Employee (1) the net amount of \$19,967.96, representing base salary earned but unpaid as of the Separation Date, *before* deduction of standard payroll taxes and deductions, (2) the net amount of \$1,465.22, representing reimbursable expenses incurred through the Separation Date, and (3) the net amount of \$41,747.79 representing vacation and sick days earned but not taken prior to the Separation Date, *before* deduction of standard payroll taxes and deductions. The Employer acknowledges and agrees that as of the date hereof it has reconciled and paid all outstanding charges on Employee's Company credit card. The Employer further acknowledges and agrees that it will pay outstanding accounting fees attributable to Employer and due to Capossela, Cohen, LLC, not to exceed \$4,000, for work performed in relation to the issuance of the 2018 RSAs (as hereinafter defined). The Employee acknowledges and agrees that as of the date hereof, he has made all requests for reimbursement of business expenses to which he may be entitled pursuant to the Employer's reimbursement policy, and provided such substantiation as may be required thereunder, and shall hereafter not have any right to request reimbursement of any additional amounts.

(b) *Severance*. Installment payments equal to the Employee's current salary for the period commencing on the Separation Date and terminating on September 25, 2020 ("Severance Period"), equaling a total of \$316,794.84, *before* deduction of standard payroll taxes and deductions, to be paid in bi-monthly increments starting on the first pay period following the Effective Date.

(c) *Restricted Stock Awards*. On the Separation Date, Employer will provide the Employee with 392,002 shares of the Employer's common stock, par value \$0.0001 per share, pursuant to the restricted stock awards vested on the Separation Date (the "Vested RSAs"). On the Effective Date, Employer will provide the Employee with an additional 50,000 shares of the Employer's common stock, par value \$0.0001 per share. It is understood an additional 185,634 restricted stock awards were previously issued on June 29, 2018 (the "2018 RSAs") and are currently held in Employee's account in book entry form with Transfer Online, Inc.

(d) *Stock Options*. On the Effective Date, Employer will provide the Employee with a written option award agreement, reflecting conversion of 461,554 incentive stock options (“ISOs”) vested through the Separation Date to an equal number of nonqualified stock options exercisable through October 31, 2022. Employee’s vested ISOs consist of options to purchase (i) incentive stock options to purchase 371,268 shares of common stock of Reed’s Inc. at the exercise price of \$1.70 per share and (ii) incentive stock options to purchase 90,286 at the exercise price of \$1.60 per share.

(e) If, upon Employer’s furnishing to Employee of all COBRA forms and notices, the Employee timely and properly elects COBRA continuation coverage under Employer’s group health plan, the Employer will pay 100% of Employee’s COBRA premiums until the earlier of final day of the Severance Period or commencement of coverage sponsored by subsequent employer (if any). If Employee’s COBRA coverage continues for the entire Severance Period at the conclusion of the Severance Period, the Employee shall be eligible to continue his coverage, pursuant to COBRA, and shall be responsible for the entire COBRA premium for the remainder of the applicable COBRA continuation period.

(f) *Expenses*. Employer will reimburse Employee’s reasonable legal and accounting expenses incurred in connection with the negotiation and finalization of this Agreement up to \$15,000.

(g) Upon the Employee’s signed request, the Employer will provide the Employee and/or a prospective employer written confirmation of the Employee’s employment with the Employer, including his dates of employment and salary information.

(h) The Employee understands, acknowledges and agrees that these benefits are in exchange for executing this Agreement. The Employee further acknowledges no entitlement to any additional payment or consideration not specifically referenced herein.

#### 4. Release.

##### (a) General Release and Waiver of Claims by Employee

The Employee and his heirs, executors, representatives, agents, insurers, administrators, successors and assigns (collectively the “Employee Releasers”) irrevocably and unconditionally fully and forever waive, release and discharge the Employer, including the Employer’s affiliates, predecessors, successors and assigns, and all of their respective officers, directors, employees, shareholders, in their corporate and individual capacities (collectively, the “Employer Releasees”) from any and all claims, demands, actions, causes of actions, obligations, judgments, rights, fees, damages, debts, obligations, liabilities and expenses (inclusive of attorneys’ fees) of any kind whatsoever (collectively, “Claims”), whether known or unknown, from the beginning of time to the Effective Date of this Agreement, including, without limitation, any Claims under any federal, state, local or foreign law, that Employee Releasers may have or have ever had arising out of, or in any way related to the Employee’s hire, benefits, employment, termination or separation from employment with the Employer and any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter, including, but not limited to (i) any and all claims under Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, as amended, the Family and Medical Leave Act, as amended, the Fair Labor Standards Act, the Equal Pay Act, as amended, the Employee Retirement Income Security Act, as amended (with respect to unvested benefits), the Civil Rights Act of 1991, as amended, Section 1981 of U.S.C. Title 42, the Sarbanes-Oxley Act of 2002, as amended, the Worker Adjustment and Retraining Notification Act, as amended, the National Labor Relations Act, as amended, the Age Discrimination in Employment Act, as amended, the Genetic Information Nondiscrimination Act of 2008, the California Fair Employment and Housing Act, as amended, and/or any other Federal, state, local or foreign law (statutory, regulatory or otherwise) that may be legally waived and released; and (ii) any tort, contract and/or quasi-contract law, including but not limited to claims of wrongful discharge, defamation, emotional distress, tortious interference with contract, invasion of privacy, nonphysical injury, personal injury or sickness or any other harm. However, this general release of claims excludes, and the Employee does not waive, release or discharge (i) any right to file an administrative charge or complaint with the Equal Employment Opportunity Commission or other administrative agency; (ii) claims under state workers’ compensation or unemployment laws; or (iii) indemnification rights the Employee has against the Employer, including without limitation under Employer’s Articles of Incorporation, Bylaws or directors and officers insurance policies, and/or any other claims that cannot be waived by law.

If the Employee applies for unemployment benefits, the Employer shall not contest it. When so required, the Employer will answer any inquiries by the Department of Labor concerning the termination of the Employee's employment in a truthful manner.

(b) Waiver of California Civil Code Section 1542

Employee understands that he may later discover Claims or facts that may be different than, or in addition to, those which Employee now knows or believes to exist with regards to the subject matter of this Agreement, and which, if known at the time of signing this release, may have materially affected this Agreement or Employee's decision to enter into it. Nevertheless, the Employee Releasers hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts. The Employee Releasers have been made aware of, and understand, the provisions of California Civil Code Section 1542 and hereby expressly waive any and all rights, benefits and protections of the statute and the protection of any other state statutes that may be applicable, which provides, **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

(c) Specific Release of ADEA Claims

The Employee Releasers hereby irrevocably and unconditionally fully and forever waive, release and discharge the Employer Releasees from any and all Claims, whether known or unknown, from the beginning of time to the date of the Employee's execution of this Agreement arising under the Age Discrimination in Employment Act (ADEA), as amended, and its implementing regulations. By signing this Agreement, the Employee hereby acknowledges and confirms that: (i) the Employee has read this Agreement in its entirety and understands all of its terms; (ii) the Employee has been advised of and has availed himself of his right to consult with his attorney prior to executing this Agreement; (iii) the Employee knowingly, freely and voluntarily assents to all of the terms and conditions set out in this Agreement including, without limitation, the waiver, release and covenants contained herein; (iv) the Employee is executing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which he is otherwise entitled; and (v) the Employee understands that the release contained in this paragraph does not apply to rights and claims that may arise after the date on which the Employee signs this Agreement.

(d) General Release and Waiver of Claims by Employer

The Employer and its representatives, agents, insurers, successors and assigns (collectively the "Employer Releasers") irrevocably and unconditionally fully and forever waive, release and discharge the Employee and the Employee's heirs, executors, representatives, agents, insurers, administrators, successors and assigns from any and all Claims, whether known or unknown, from the beginning of time to the Effective Date of this Agreement, including, without limitation, any Claims under any federal, state, local or foreign law, that Employer Releasers may have or have ever had arising out of, or in any way related to the Employee's hire, benefits, employment, termination or separation from employment with the Employer and any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter, including, but not limited to (i) any and all claims under the Sarbanes-Oxley Act of 2002, as amended, and/or any other Federal, state, local or foreign law (statutory, regulatory or otherwise) that may be legally waived and released; and (ii) including but not limited to claims under the Employment Agreement, claims of defamation, breach of an express or implied contract, tortious interference with a contract or prospective business advantage, breach of the covenant of good faith and fair dealing, promissory estoppel, detrimental reliance, or any other harm.

5. Knowing and Voluntary Acknowledgement. The Employee specifically agrees and acknowledges that: (i) the Employee has read this Agreement in its entirety and understands all of its terms; (ii) the Employee has been advised of and has availed himself of his right to consult with his attorney prior to executing this Agreement; (iii) the Employee knowingly, freely and voluntarily assents to all of its terms and conditions including, without limitation, the waiver, release and covenants contained herein; (iv) the Employee is executing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which he is otherwise entitled; (v) the Employee is not waiving or releasing rights or claims that may arise after his execution of this Agreement; and (vi) the Employee understands that the waiver and release in this Agreement is being requested in connection with the cessation of his employment with the Employer.

The Employee further acknowledges that he has twenty-one (21) days to consider the terms of this Agreement and consult with an attorney of his choice, although he may sign it sooner if desired. Further, the Employee acknowledges that he shall have an additional seven (7) days from the date on which he signs this Agreement to revoke consent to his release of claims under the ADEA by delivering notice of revocation to Iris Snyder, Chief Financial Officer, at the Employer, isnyder@reedsinc.com, by e-mail, fax or overnight delivery before the end of such seven-day period. In the event of such revocation by the Employee, the Employer shall have the option of treating this Agreement as null and void in its entirety.

This Agreement shall not become effective, until November 8, 2019 ("Effective Date"). Such date shall be the Effective Date of this Agreement. No payments due to the Employee hereunder shall be made or begin before the Effective Date. Notwithstanding the foregoing, for the avoidance of doubt the Employer shall transfer the Vested RSAs to the Employee as of the Separation Date.

6. Post-termination Obligations and Restrictive Covenants.

(a) Acknowledgment

The Employee understands and acknowledges that by virtue of his employment with the Employer, he had access to and knowledge of Confidential Information, was in a position of trust and confidence with the Employer, and benefitted from the Employer's goodwill. The Employee understands and acknowledges that the Employer invested significant time and expense in developing the Confidential Information and goodwill. The Employee further understands and acknowledges that the services he provided to the Employer are unique, special or extraordinary.

The Employee further understands and acknowledges that the restrictive covenants below are necessary to protect the Employer's legitimate business interests in its Confidential Information and goodwill and in the Employee's unique, special or extraordinary services. The Employee further understands and acknowledges that the Employer's ability to reserve these for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer and that the Employer would be irreparably harmed if the Employee violates the restrictive covenants below.

(b) Confidential Information.

(1) Confidential Information. Employer's "Confidential Information" is all confidential and/or proprietary knowledge, trade secrets, data or information of the Employer entrusted to Employee, whether in writing, in computer form, or conveyed orally, that is not generally available to others in the form in which such information is used by Employer and that gives Employer a competitive advantage over other companies who do not have access to this information. By way of illustration but not limitation, Confidential Information includes tangible and intangible information relating to formulations, products, processes, know-how, designs, formulas, methods, developmental or experimental work; clinical data; improvements; discoveries; plans for research; new products; marketing and selling; business plans; budgets; unpublished financial statements; licenses; prices and costs; suppliers; customers; customer needs and preferences (such as typical order quantities and composition, delivery requirements or schedules, particular pricing needs or discount arrangements, advertising allowances and methods of doing business); customer contracts, credit procedures and terms; supplier identities, key decision makers at each supplier, and supplier specialties; pricing strategies and rationale; contact information and information about compensation, specific capabilities, and performance evaluations of Employer personnel; and any information described above that the Employer obtains from its clients or any other third party and that the Employer treats as confidential, whether or not owned or developed by the Employer.

(2) Employee understands that the above are simply examples of Employer's Confidential Information, and not a complete list. Employee further understands that as part of his duties Employee may have participated in developing Confidential Information for Employer, which then became Employer's Confidential Information.

(3) Employee agrees that he will not appropriate for his own use, use, disclose, divulge, furnish, or make available to any person any of the Employer's Confidential Information; provided, that the term "Confidential Information" shall not include such (A) information which is or becomes generally available to the public other than as a result of unauthorized or improper disclosure by Employee, (B) information which was in the possession of Employee prior to the time of disclosure by Employer, (C) information obtained from a third party who, to Employee's knowledge, had the right to disclosure such information without any confidentiality restrictions, or (D) information independently developed by Employee without the use of information disclosed by Employer. Notwithstanding the foregoing, Employee may disclose Confidential Information to the extent he is compelled to do so by lawful service of process, subpoena, court order, or as he is otherwise compelled to do by law or the rules or regulations of any regulatory body to which he is subject, including full and complete disclosure in response thereto, in which event he agrees (unless prohibited by law) to provide Employer with a copy of the documents seeking disclosure of such information promptly upon receipt of such documents and prior to their disclosure of any such information, so that Employer may, upon notice to Employee, take such action as Employer deems appropriate in relation to such subpoena or request and Employee (unless otherwise compelled to do so by lawful service of process, subpoena, court order, or by law or the rules or regulations of any regulatory body or governmental agency or instrumentality) may not disclose any such information until Employer has had the opportunity to take such action.

(c) Intellectual Property. Employee agrees that all right, title, and interest to all works of whatever nature generated in the course of his employment with the Employer resides with the Employer. Employee agrees that he will return to Employer or delete or destroy, not later than the Effective Date, all property, in whatever form (including computer files and other electronic data), of the Employer in his possession, including without limitation, all copies (in whatever form) of all files or other information pertaining to the Employer, its officers, employees, directors, shareholders, customers, suppliers, vendors, or distributors and any business or business opportunity of the Employer.

(d) Mutual Non-Disparagement. The Parties each agree that they, and in the case of Employer, its executive officers and directors, shall not make any disparaging statements or representations, whether orally or in writing, by word or gesture, to any person whatsoever, about the other Party or the other Party's directors, officers, employees, attorneys, agents, or representatives, as applicable. For purposes of this paragraph, a disparaging statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character, or product or service quality of the person or entity to whom the communication relates.

(e) Non-Solicitation. To the full extent permitted by law, the Employee will not directly or indirectly, individually or on behalf of any person, company, enterprise or entity, or as a sole proprietor, partner, stockholder, director, officer, principal, agent, executive, or in any other capacity or relationship, for a period of six (6) months from the Effective Date:

(1) encourage, solicit, induce, cause, or in any manner attempt to encourage, solicit, induce or cause any person, firm, corporation, or other entity or organization which is a client, customer, account, vendor, supplier, distributor, licensee of, or has any business relationship with, Employer's or any of its subsidiaries to terminate such relationship with, reduce the amount of business conducted with, or change in a manner adverse to Employer or its subsidiaries; or

(2) encourage, solicit, induce, cause, or in any manner attempt to encourage, solicit, induce or cause, any person employed by or providing services to Employer's or its subsidiaries to leave, curtail, or change in a manner adverse to Employer, such employment or service relationship.

(f) Acknowledgements Respecting Restrictive Covenants. With respect to the restrictive covenants set forth in this Section 6, the Parties acknowledge and agree that:

(1) (A) Each of the restrictive covenants contained in this Section 6 shall be construed as a separate covenant with respect to each activity to which it applies, (B) if, in any judicial proceeding, a court shall deem any of the restrictive covenants invalid, illegal, or unenforceable because its scope is considered excessive, such restrictive covenant shall be modified so that the scope of the restrictive covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal, and enforceable, and (C) if any restrictive covenant (or portion thereof) is deemed invalid, illegal, or unenforceable in any jurisdiction, as to that jurisdiction such restrictive covenant (or portion thereof) shall be ineffective to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining restrictive covenants (or portion thereof) in such jurisdiction or rendering that or any other restrictive covenant (or portion thereof) invalid, illegal, or unenforceable in any other jurisdiction.

(2) The Parties hereto hereby declare that it is impossible to measure in money the damages that will accrue to a Party in the event the other Party breaches any of the restrictive covenants provided in this Section 6. In the event that a Party breaches any such restrictive covenant, the nonbreaching Party shall be entitled to an injunction, a restraining order or such other equitable relief, including, but not limited to, specific performance (without the requirement to post bond) restraining such Party from violating such restrictive covenant. If the nonbreaching Party shall institute any action or proceeding to enforce the restrictive covenant, the breaching Party hereby waives the claim or defense that the breaching Party has an adequate remedy at law and agrees not to assert in any such action or proceeding the claim or defense that the nonbreaching Party has an adequate remedy at law.

(3) The remedies provided for in this Section 6 are cumulative and in addition to any other rights and remedies the Parties may have under law or in equity.

(g) Cooperation. The Employee agrees that, following the Effective Date, the Employee will continue to provide reasonable cooperation to Employer and/or any of its subsidiaries and its or their respective counsel in connection with any investigation, administrative proceeding, or litigation relating to any matter that occurred during the Employee's employment in which the Employee was involved or of which the Employee has knowledge. As a condition of such cooperation, Employer shall reimburse the Employee for reasonable out-of-pocket expenses incurred at the request of Employer and shall compensate Employee at a daily rate equal to his daily rate of compensation at the time of termination of his employment. The Employee also agrees that, in the event that the Employee is subpoenaed by any person or entity (including, but not limited to, any government agency) to give testimony or provide documents (in a deposition, court proceeding, or otherwise) that in any way relates to the Employee's employment by Employer, the Employee will, if legally permitted, give prompt notice of such request to Employer and, unless legally required to do so, will make no disclosure until Employer's subsidiaries has had a reasonable opportunity to contest the right of the requesting person or entity to such disclosure

(h) Remedies. In the event of a breach or threatened breach by either Party of any of the provisions of this Agreement, such Party hereby consents and agrees that the other Party 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.

7. Heirs and Assigns. This Agreement is binding on and is for the benefit of the Parties hereto and their respective successors (whether by merger, sale of assets, reorganization or other form of business acquisition, disposition or business reorganization), assigns, heirs, executors, administrators, and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by Employee.

8. Integration. This Agreement constitutes the complete agreement between the Employer and Employee regarding the issues addressed in this Agreement. The terms of this Agreement may be changed, modified, or discharged only by an instrument in writing signed by the Parties hereto. A failure of the Employer or Employee to insist on strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision hereof. In the event that any provision of this Agreement is determined to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

9. Choice of Law. This Agreement shall be construed, enforced, and interpreted in accordance with and governed by the laws of the State of Delaware, without regard to its choice of law provisions.

10. Withholding. The Employer may withhold from any and all amounts payable under this Agreement such federal, state, and local taxes or other withholdings as may be required to be withheld pursuant to any applicable law or regulation.

11. Construction of Agreement. The Parties hereto acknowledge and agree that each Party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction to the effect that ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed fairly as to both Parties hereto and not in favor or against either Party.

12. Counterparts. This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

13. Notice. Any notice or other communication required or permitted under this Agreement shall be effective only if it is in writing and shall be deemed to be given when delivered personally or four days after it is mailed by registered or certified mail, postage prepaid, return receipt requested or one day after it is sent by a reputable overnight courier service and, in each case, addressed to the Employer, to its principal place of business and to Employee, to his address set forth on the signature page hereof, or to such other address as any Party hereto may designate by notice to the other.

14. Severability. The Parties hereto intend that the validity and enforceability of any provision of this Agreement shall not affect or render invalid any other provision of this Agreement.

15. 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 Employee and by Chief Executive Officer of the Employer. 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.

16. 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.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement, by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

18. No Admission. Nothing in this Agreement shall be construed as an admission of wrongdoing or liability on the part of either Party.

19. Attorneys' Fees. Should either Party breach any of the terms of this Agreement or the post- termination obligations herein, to the extent authorized by state law, the breaching Party will be responsible for payment of all reasonable attorneys' fees and costs that the other Party incurred in the course of enforcing the terms of the Agreement, including demonstrating the existence of a breach and any other contract enforcement efforts.

20. Section 409A. This Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (“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. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a “separation from service” under Section 409A. Notwithstanding the foregoing, the Employer makes no representations that the payments and benefits provided under this Agreement comply with Section 409A and in no event shall the Employer be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by the Employee on account of non-compliance with Section 409A.

21. Acknowledgment of Full Understanding. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT. THE EMPLOYEE FURTHER ACKNOWLEDGES THAT HIS SIGNATURE BELOW IS AN AGREEMENT TO RELEASE EMPLOYER FROM ANY AND ALL CLAIMS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT.

22. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes any prior understandings, agreements or representations between the Parties, written or oral, with respect to the subject matter of this Agreement. For clarity, all the terms of the Employment Agreement are amended, replaced and superseded by this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date above.

REED’S INC.

By /s/ Iris Snyder

Name: Iris Snyder

Title: Chief Financial Officer

EMPLOYEE

Signature: /s/ Valentin Stalowir

Name: Valentin Stalowir

## Section 7: EX-31.1

EXHIBIT 31.1

### CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John Bello, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Reed's, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2019

/s/ John Bello

John Bello  
Interim Chief Executive Officer  
(Principal Executive Officer)

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## Section 8: EX-31.2

EXHIBIT 31.2

### CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Iris Snyder, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Reed's, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2019

*/s/ Iris Snyder*

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Iris Snyder  
Chief Financial Officer  
(Principal Financial Officer)

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## Section 9: EX-32.1

EXHIBIT 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Reed's, Inc., a Delaware corporation (the "Company") for the period ending September 30, 2019 as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), John Bello, Interim Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

REED'S, INC.

Date: November 13, 2019

By: /s/ John Bello

John Bello  
Interim Chief Executive Officer  
(Principal Executive Officer)

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## Section 10: EX-32.2

EXHIBIT 32.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Reed's, Inc., a Delaware corporation (the "Company") for the period ending September 30, 2019 as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), Iris Snyder, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of her knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

REED'S, INC.

Date: November 13, 2019

By: /s/ Iris Snyder  
Iris Snyder  
Chief Financial Officer  
(Principal Financial Officer)

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