

# Corporate Brand Addendum to Standard Vendor Agreement

This Corporate Brand Addendum to Standard Vendor Agreement (this “**Addendum**”) is by and between Kroger and Vendor and amends and supplements the terms and conditions of the Standard Vendor Agreement (“**SVA**,” and together with this Addendum, this “**Agreement**”) entered into by and between Kroger and Vendor as of the Effective Date. Capitalized terms not otherwise defined herein will have the meanings assigned to them in the SVA.

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## Introduction

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### Scope

The terms and conditions of this Addendum amend and supplement the terms and conditions of the SVA and apply to Vendor with respect to the provision of Kroger’s Corporate Brand Products described in **Exhibit A** attached hereto, as may be amended from time to time by Kroger (for purposes of this Addendum “**Products**”). This Addendum is effective as of the Effective Date of the SVA and applies to any shipment of Products made by Vendor to Kroger from and after the Effective Date.

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### Execution of Addendum

**By its execution of this Addendum, Vendor acknowledges its acceptance of the terms and conditions contained herein and represents and warrants that Vendor’s execution and delivery of this Addendum to Kroger has been duly authorized by all necessary corporate or other action on the part of Vendor.** Vendor will promptly deliver an executed original of the signature page of this Addendum signed by a person of authority representing Vendor to the Kroger Corporate Brands Department, but in no event later than fifteen (15) days after Vendor’s receipt of this Addendum. If Kroger does not receive an executed signature page from Vendor within this timeframe, Vendor's shipment of Products in response to Kroger’s Purchase Orders for Products, whether electronically, orally or hard copy generated, constitutes Vendor's unconditional acceptance of this Addendum.

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## General Terms and Conditions

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### Purchase Orders

The legal basis for Kroger's purchase of Products is set forth in Kroger Purchase Orders and in this Agreement.

Unless Vendor and Kroger have executed a written amendment to the P.O. Terms and Conditions, the P.O. Terms and Conditions apply to every purchase of Products by Kroger from Vendor. If there is an inconsistency between the terms and conditions contained in this Agreement (including the P.O. Terms and Conditions) and the terms and conditions contained in other documents relating to the business to be conducted between Kroger and Vendor, the terms and conditions of this Agreement, (including the P.O. Terms and Conditions), will prevail unless the conflicting document provides otherwise and is signed by both Kroger and Vendor.

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### Specifications

Vendor will manufacture and supply Products under Kroger's Trademarks (defined hereunder) in strict compliance with the specifications for the Products set forth in **Exhibit A** attached hereto and incorporated herein, as may be amended from time to time by Kroger ("**Specifications**").

Vendor will be responsible for, without limitation, the sourcing and warehousing of raw and packaging materials, ingredients, compounding, component preparation, incoming and outgoing quality control, fabrication, filling, inspecting, labeling, packing, packaging and/or warehousing of Products, and any part thereof, as well as associated activities, in accordance with the Specifications and the terms and conditions of this Agreement. Vendor will not make any change to the Products or Specifications, including, without limitation, the raw or packaging materials, ingredients, any portion or component of the Products ("**Materials**"), formula, the production process, the production equipment or the production location(s) relating to Vendor's performance of any Kroger Purchase Order for Products unless and until Vendor has obtained Kroger's prior written consent. Kroger will be entitled to reject any such change, in its sole discretion.

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### Supply Of Materials

At Kroger's option, Kroger may supply, or arrange for supply of, certain Materials for Vendor. Such Materials will be used solely for Kroger and in no case for third parties or Vendor's affiliates without Kroger's prior written consent. Prior to the use of any Materials in the manufacturing of the Products, Vendor will, at Vendor's expense, test such Materials for compliance with the Specifications. Nothing herein will relieve Vendor of any of its obligations under this Agreement or otherwise with respect to the Products, all of which will remain absolute, nor constitute a waiver by Kroger in any respect.

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## Vendor Compliance

At all times while providing Products to Kroger, Vendor and its production location(s) must comply with the Vendor Certification Policy attached hereto as **Exhibit B** and incorporated herein ("**Vendor Certification Policy**"). Vendor may not assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement.

Upon reasonable notice by Kroger, Kroger and its representatives may periodically audit Vendor's production and storage location(s), books and records at Vendor's expense to ensure compliance with the Vendor Certification Policy and the terms and conditions of this Agreement.

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## Trademarks

Kroger hereby grants to Vendor a limited, non-exclusive, royalty free license and right to use the trademarks, trade names and trade dress of Kroger identified on **Exhibit C** attached hereto ("**Trademarks**") solely in connection with the manufacturing, packaging and labeling of Products for Kroger. Vendor will only use the Trademarks as authorized by this Agreement and for no other purpose without Kroger's prior written consent. Without limiting the above, Vendor will not (i) grant a sublicense to any third party, including any affiliate or subsidiary of Vendor, (ii) use the Trademarks to manufacture products for, or to supply products to, any third party; or (iii) use the Trademarks after Kroger terminates the license hereunder by written notice to Vendor. Vendor recognizes and acknowledges that all right, title and interest in and to the Trademarks is vested in Kroger and use of the Trademarks on the Product will inure solely to the benefit of Kroger.

All packaging materials, advertising, merchandising and promotional materials bearing the Trademarks must be submitted to Kroger for approval prior to such use, which approval shall not be unreasonably withheld or delayed. No such approval shall be deemed to be an admission by Kroger that the item approved complies with applicable laws and regulations. In the event Vendor received notice of disapproval as provided herein with respect to any item, it shall not use such item until the reason for disapproval has been remedied to the satisfaction of Kroger. Once an item has been approved by Kroger, Vendor will make no change in the item without the prior approval of Kroger.

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## Ownership of Intellectual Property

Unless otherwise agreed to in writing by Kroger and Vendor, any inventions, developments, improvements, processes, methods, formulae, specifications, ideas, trade secrets, know how, discoveries or the like concerning or in relation to any aspect of, or as a result of, the production of the Products by Vendor, including any data, results, information and notes deriving from and relating thereto (collectively, "**Intellectual Property**") which is conceived, reduced to practice, discovered, invented and/or developed pursuant to or is a result of this Agreement whether by Vendor, by Kroger, or jointly by Kroger and Vendor, will be owned solely by Kroger. Without limiting the foregoing, any work of Vendor's authorship relating to the Products or parts thereof is "work made for hire." Vendor hereby assigns, transfers and sets over and onto and will assign, transfer and set over and onto Kroger all such Intellectual Property, including all rights, interests and proprietary claims, in the world.

Without limiting the generality of the foregoing, in the event that any Kroger owned Intellectual Property (including any formula, method, specifications or process) is altered,

revised, reformulated or improved in any manner (“**Improvement**”), the resulting Intellectual Property (including such formula, method, specifications or process) will be owned solely by Kroger. As set out above, Vendor hereby assigns, transfers and sets over any and all rights, interests and claims therein to Kroger.

Vendor agrees to do any and all acts, and to execute any and all instruments, that Kroger may request to secure to itself the ownership rights of the Intellectual Property addressed above.

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### **Product Disposition**

Vendor will not sell or otherwise provide or deliver any Products or any part thereof Containing Kroger Trademarks or Intellectual Property to any third party without Kroger’s prior written consent. Outdated or unsaleable Products in the possession of Vendor must be destroyed and Kroger provided with proof of destruction. Short-dated Products with less than adequate shelf life to sell through the normal Kroger distribution system must be donated to the local Second Harvest Food Bank. The appropriate Kroger Coordinated Category Management Representative must be notified of any other disposition request regarding Products or packaging and Vendor’s request must be approved in writing by Kroger prior to Vendor taking any action contrary to the foregoing.

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### **Contractor Status**

Kroger and Vendor are and will always remain independent contractors with respect to each other, and nothing in this Agreement will be construed to place the parties in the relationship of partners, joint ventures, fiduciaries or agents. Neither Kroger nor Vendor is granted any right or authority to assume or to create an obligation or responsibility, express or implied, on behalf of or in the name of the other or bind the other in any manner whatsoever.

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### **Termination**

Kroger may at any time for any or no reason terminate its purchase of Products from Vendor. Kroger will endeavor to provide Vendor 90 days notice of termination in the event of termination without cause. Kroger may immediately cease all purchases from Vendor if it has cause. Cause will exist upon the happening of any of the following events: (a) Vendor’s sale or transfer of its business or manufacturing facility; (b) Vendor becoming bankrupt or insolvent or becoming unable to pay its debts when due; (c) Vendor’s breach of any provision of this Agreement; or (d) Vendor’s inability to provide adequate assurances that it can continue to meet all provisions of this Agreement. Except in the case of termination for cause, Kroger will purchase from Vendor three (3) months of finished Products and six (6) months of packaging from the date of notice of termination. Any Products or packaging not acquired by Kroger must be immediately destroyed or otherwise disposed of as approved in writing by Kroger.

**CORPORATE BRAND ADDENDUM TO  
STANDARD VENDOR AGREEMENT  
SIGNATURE PAGE**

IN WITNESS WHEREOF, Vendor and Kroger have executed this Addendum as of the Effective Date.

**VENDOR:** \_\_\_\_\_  
(legal name of entity)

**a** \_\_\_\_\_  
(business entity type)

**By:** \_\_\_\_\_  
(signature)

**Name of Signatory:** \_\_\_\_\_  
(printed name)

**Title:** \_\_\_\_\_  
(printed title)

**Date:** \_\_\_\_\_  
(date)

**Vendor Name as Shown on Invoice:**  
\_\_\_\_\_

**Vendor Taxpayer Identification Number (EIN/SSN):**  
\_\_\_\_\_

***PLEASE RETURN THE SIGNED ORIGINAL OF THIS PAGE TO THE FOLLOWING:***

**For Fred Meyer**

**Kroger Corporate Brands Department  
3800 SE 22<sup>nd</sup> Avenue  
Portland, OR 97202  
Fax: (503) \_\_\_\_\_**

**For Kroger**

**Kroger Corporate Brands Department  
1014 Vine Street  
Cincinnati, OH 45202  
Fax: (513) \_\_\_\_\_**

**EXHIBIT A  
PRODUCTS**

**EXHIBIT B**  
**VENDOR CERTIFICATION POLICY**

**EXHIBIT C  
TRADEMARKS**