

## **Food Safety Modernization Act Agreement**

The Kroger Co. ("Kroger") and Vendor agree to the following:

### **1. Foods**

The term Foods, as used herein, means food as defined in section 201(f) of the Food, Drug and Cosmetic Act (FDCA) which includes, but is not limited to, raw produce, processed foods and chewing gum (and components thereof, including raw materials and ingredients), articles of drink, dietary supplements, game meats and food contact substances such as plates, cookware, food packaging and utensils. The term Foods includes human and animal food.

### **2. FDCA and FSMA Generally**

Vendor agrees to comply with all requirements of the FDCA (21 USC § 301 et seq.) as applicable, including, but not limited to, applicable requirements of the Food Safety Modernization Act (FSMA) (P.L. 111-353). Requirements under FSMA include, among others, those related to produce safety (21 CFR Part 112), preventive controls for human food (21 CFR Part 117) and animal food (21 CFR Part 507), sanitary food transportation (21 CFR Part 1 Subpart O) and food defense (21 CFR Part 121).

### **3. FSVP Responsibilities**

With respect to Foods, Kroger shall not serve as the Foreign Supplier Verification Program Importer ("FSVP Importer") as that term is defined in 21 CFR Part 1 Subpart L. This provision shall not apply for shipments where (a) Kroger is the sole person falling within the definition of FSVP Importer and (b) Kroger has agreed in writing to be designated on the entry documentation as the FSVP Importer. Vendor shall not restructure ordinary terms of sale, transactions, or alter the ordinary course of business otherwise for the purpose of making Kroger the sole person falling within the definition of FSVP Importer.

### **4. Sanitary Food Transportation Act**

Vendor acknowledges Kroger shall reject any load of Foods (including Foods subject to the Perishable Agricultural Commodities Act) for violations of the Sanitary Food Transportation Act (Section 416 of the FDCA) of which Kroger is aware, including failure to maintain required records. Vendor assumes responsibility for ensuring loads of Foods rejected by Kroger are not sold or distributed unless a qualified individual determines the Foods are not unsafe consistent with 21 CFR § 1.908. For purposes of this paragraph the terms shipper, carrier, loader and receiver mean those terms as defined in 21 CFR § 1.902. Vendor acknowledges Kroger shall not serve as shipper, carrier or loader unless otherwise agreed to in writing. In circumstances where Kroger arranges for transportation, Vendor shall not be responsible for serving as shipper, or carrier unless Vendor is actually acting as a motor carrier for Foods. In circumstances where Vendor is acting as a loader, Vendor assumes the responsibilities of providing the carrier with all necessary sanitary specifications for the carrier's vehicle and transportation equipment to prevent the Foods transported from becoming unsafe consistent with 21 CFR §

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1.908(b)(1) and providing operating temperatures for Foods that require time/temperature control for safety consistent with 21 CFR § 1.908(b)(2).

The signatory of this agreement represents and warrants that he or she is duly authorized and has the legal capacity to do so. This agreement, in its unamended form, shall be effective by signing on behalf of the party you are representing.

Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

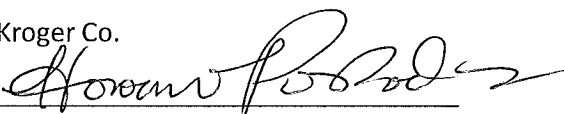
By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The Kroger Co.

By: 

Print Name: HOWARD POTZOLA

Title: VICE PRESIDENT - CORP FOOD TECHNOLOGY

Date: 5/15/2017