KROGER SUPPLIER HUB PORTAL APPLICATION USER LICENSE AGREEMENT

This KROGER SUPPLIER HUB PORTAL APPLICATION USER LICENSE AGREEMENT (the "Agreement") relates to the [Kroger Supplier Hub Portal Application (the "Application"), which is owned by The Kroger Co., an Ohio corporation (hereinafter "Kroger"), and consists of a repository for Users to provide Kroger with information and documents relating to a Kroger Supplier's compliance with certain federal, state and local laws as well as Kroger policies required for transacting business with Kroger ("Supplier Compliance Requirements").

For purposes of this Agreement, "Supplier" means an entity that supplies or acts as a broker for supplying Kroger with various products and/or services and utilizes the Application for their Supplier Compliance Requirements; and "User" means a Supplier or any other person, company, or entity which is authorized to use the Application by receiving a user name and password from Kroger or the Supplier.

In consideration of the mutual covenants of Kroger, the Supplier and the User set forth herein and the mutual benefits to be derived from this Agreement, the parties, intending to be legally bound, hereby agree as follows:

1.   Acceptance. By accessing the Application or Kroger's Internet servers ("Servers"), the User agrees to be bound by the terms of this Agreement. The User further agrees to be bound by all applicable laws and regulations, including U.S. export and re-export control laws and regulations. If the User does not agree to this Agreement, the User should not use this Application. The material provided in this Application is protected by law, including, but not limited to, U.S. copyright law and international treaties. The User's continued use of the Application or Servers constitutes the User's continued acceptance of this Agreement.

2.   License. Subject to the terms and conditions set forth in this Agreement, Kroger hereby grants User a revocable, nonexclusive, non-transferable, limited license, without the right to sublicense, to use the Application. Access to the Application shall be controlled by Kroger through the use of IP addresses and/or passwords. This license terminates automatically if the User breaches any terms or conditions of this Agreement or if Kroger revokes the license to the User as granted herein.

3.   User Access. All equipment and Internet access necessary for User to access the Application and the Servers ("Equipment") shall be provided by User at its expense. Kroger shall have no obligation regarding selection, acquisition, maintenance or use of the Equipment. Kroger has no responsibility for any failure of such items or any failure or limitation of the Internet or other computer hardware or software.

4.   Purpose for Access. The User represents and warrants that it shall not: (a) provide any incorrect, invalid or fraudulent information or documents to the Application relating to any Supplier Compliance Requirements; (b) use the Application for any purpose other than the purposes specifically permitted by this Agreement; (c) download or copy all or any portion of the Application to any media whatsoever, including but not limited to magnetic media, compact disc, and other forms of media that may or may not be in existence at the time this Agreement is executed; (d) transfer any use or make any portion of the Application available to anyone other than Users.

5.   Ownership/Intellectual Property Rights. Kroger possesses all required licenses and copyrights on the Application. Kroger owns and/or licenses the Application and neither Supplier nor Users obtain any right, title or interest in the Application except as expressly set forth in this Agreement. "Kroger" is a registered mark of Kroger and no rights relating to such mark are granted pursuant to this Agreement. The User will not reverse engineer, decompile, or disassemble the Application or communication protocol used by the Application. Any unauthorized use of any material contained on this Application may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes.

6.   Security. User acknowledges that (a) the Application, and (b) the terms and conditions of this Agreement, contain Kroger highly confidential, unique, secret and valuable information. User agrees that it shall not sell, transfer or publish the Application, any materials contained in, relating to or forming a part of the Application or any other Kroger proprietary information without Kroger prior written consent. All User obligations

and undertakings relating to confidentiality and nondisclosure shall survive the termination of this Agreement for any reason. User shall prevent anyone other than Users from accessing the Application.

7. Representations, Warranty Disclaimer, and Indemnification

a. **Representations Regarding License and Server Access.** Kroger represents that it has the full and unencumbered right to license the Application and the right to grant User access to the applicable Servers and the content contained therein.

b. **Disclaimer of Warranty.** Kroger assumes no liability or responsibility for any typographical, data input errors, calculation errors, or other errors or omissions on the Application. KROGER PROVIDES THE APPLICATION AS IS, WHERE IS, AND AS AVAILABLE, WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY. KROGER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KROGER DOES NOT WARRANT (1) THAT THE APPLICATION OR ITS SERVICES WILL BE CONTINUOUS, UNINTERRUPTED, OR SECURE, AND NOTIFIES THE USER THAT OPERATION OF THE APPLICATION MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF KROGER'S CONTROL, (2) THAT THE APPLICATION WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, (3) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR (4) THAT THE CONTENT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

c. **Disclaimer of Liability.** UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL KROGER BE LIABLE FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PROFIT, ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE INFORMATION ON THE APPLICATION OR SERVERS OR ANY ERROR IN OR DEFICIENCY OF THE APPLICATION OR SERVERS, EVEN IF KROGER OR A KROGER AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (2) ANY COSTS ARISING FROM THE USER'S OR OTHER THIRD PARTY USER'S USE OF THE APPLICATION WHICH RESULTS IN THE NEED FOR SERVICING, REPAIR, OR CORRECTION OF ANY EQUIPMENT OR DATA OWNED BY THE USER, SUPPLIER, OR ANY THIRD-PARTY.

d. **Indemnification.** The User will indemnify, defend, and hold harmless Kroger and its employees, officers, directors, agents, affiliates, subsidiaries, and independent contractors from and against any and all liability, loss, injury, claims, costs, expenses, damages, regulatory penalties, attorneys' fees, court costs, litigation expenses and related expenses, including claims, penalties or other losses imposed by any federal, state or local government ("Liabilities") which may be brought or asserted against Kroger by a person, company, entity, or government authority including, but not limited to, other Users or third parties which are not parties to this Agreement (a "Third Party"), which Liabilities are based upon or arise, directly or indirectly, from (1) any incorrect, invalid or fraudulent information or documents uploaded to the Application relating to any Supplier, (2) any breach by the User of this Agreement, or (3) any reliance upon or use by Kroger or a Third Party of any information or data provided or transmitted by the User relating to the Supplier Compliance Requirements.

8. Term and Termination. This Agreement shall continue without limit until terminated by either party immediately upon notice to the other party.

9. <u>Relationship of the Parties</u>. The User agrees that no joint venture, partnership, employment, or agency relationship exists between the User and Kroger as a result of this Agreement or the User's use of the Application.

10. <u>Entire Agreement</u>. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof.

11. <u>Assignment</u>. User may not assign its rights or delegate its duties or obligations under this Agreement without written consent of Kroger.

12. <u>Enforcement of Provisions</u>. The failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

13. <u>Governing Law</u>. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of Ohio.

14. <u>Authority</u>. The User represents the User, or the representative accepting this Agreement on behalf of the User, has full and complete authority to enter into and bind the User to this Agreement.