

Our Brands Addendum to Standard Vendor Agreement

(November 2019 Version)

This Our Brands Addendum to Standard Vendor Agreement (this “**Our Brands 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 Our Brands 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. This Our Brands Addendum supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter herein.

Introduction

Scope

The terms and conditions of this Our Brands Addendum amend and supplement the terms and conditions of the SVA and apply to Vendor with respect to the provision of Kroger’s Our Brands Products by Vendor to Kroger (for purposes of this Our Brands Addendum “**Our Brands Products**”). This Our Brands Addendum is effective as of the Effective Date of the SVA and applies to any shipment of Our Brands Products made by Vendor to Kroger from and after the Effective Date.

Execution of Our Brands Addendum

By its execution of this Our Brands Addendum, Vendor acknowledges its acceptance of the terms and conditions contained herein and represents and warrants that Vendor’s execution and delivery of this Our Brands Addendum to Kroger has been duly authorized by all necessary corporate or other action on the part of Vendor. Vendor’s shipment of Our Brands Products in response to Kroger’s Purchase Orders for Our Brands Products, whether electronically, orally or hard copy generated, constitutes Vendor’s unconditional acceptance of this Our Brands Addendum.

General Terms and Conditions

Purchase Orders

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

Unless Vendor and Kroger have executed a written amendment to the terms and conditions of the SVA or any applicable Kroger Purchase Order terms and conditions (collectively, “**P.O. Terms and Conditions**”), the P.O. Terms and Conditions apply to every purchase of Our Brands 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.

Specifications

Vendor will manufacture and supply Our Brands Products using Kroger Trademarks (defined hereunder) in strict compliance with the specifications for the Our Brands Products provided by Kroger to Vendor and incorporated herein, and 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 food safety control, incoming and outgoing quality control, fabrication, filling, inspecting, labeling, packing, packaging and/or warehousing of Our Brands 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 Our Brands Products or Specifications, including, without limitation, the raw or packaging materials, ingredients, any portion or component of the Our Brands 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 Our Brands 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.

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 the benefit of Kroger in the manufacture and provision of Our Brands Products, 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 Our Brands 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 Our Brands Products, all of which will remain absolute, nor constitute a waiver by Kroger in any respect.

Discontinuance of Our Brands Products

Kroger in its sole discretion may discontinue an Our Brands Product. Should Kroger elect to discontinue an Our Brands Product that has been supplied by Vendor, Kroger will provide to Vendor at least 120 days written notice of discontinuation for Our Brands Products sourced within North America and at least 180 days written notice of discontinuation for Our Brands Products sourced from outside of North America.

Vendor Compliance

At all times while providing Products to Kroger, Vendor and its production location(s) must comply with the Kroger Our Brands Vendor

Certification Policy, and updated by Kroger from time-to-time. 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.

Kroger Trademarks

Kroger hereby grants to Vendor a limited, non-exclusive, non-assignable, non-transferable, royalty free license and right to use certain trademarks, trade names and trade dress of Kroger identified in a Purchase Order issued by Kroger for Our Brands Products ("**Kroger Trademarks**") solely in connection with the manufacturing, packaging and labeling of Our Brands Products for Kroger. Vendor will use the Kroger Trademarks only 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 Kroger Trademarks to manufacture products for, or to supply products to, any third party; or (iii) use the Kroger Trademarks after Kroger terminates the license hereunder by written notice to Vendor. For the avoidance of doubt, the license to the Kroger Trademarks granted hereunder is limited to the provision of Our Brands Products to Kroger and Vendor has no right to use a Kroger Mark absent a Purchase Order from Kroger for the provision of Our Brands Products bearing the Kroger Mark. Vendor recognizes and acknowledges that all right, title and interest in and to the Kroger Trademarks is vested in Kroger and use of the Kroger Trademarks on the Product will inure solely to the benefit of Kroger. Vendor further agrees never to challenge, contest, or question the validity of Kroger's ownership of the Kroger Trademarks, or any trademark applications or registrations for the Kroger Trademarks.

All packaging materials, advertising, merchandising and promotional materials bearing the Kroger 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.

Kroger hereby assumes all responsibility for and agrees to indemnify, defend, and hold Vendor harmless from and against any and all losses, liabilities, penalties, fines, claims, suits, expenses (including Vendor's reasonable attorneys' fees incurred in the defense of any action against Vendor) or other damages whatsoever arising from any third-party claim to the extent arising out of or relating to Vendor's authorized use of the Kroger Trademarks in accordance with the terms and conditions of this Agreement.

In the event Vendor is named as a party in any action or proceeding relating in whole or in part to its use of the Kroger Trademarks, Vendor agrees to promptly notify Kroger, and Kroger, at its discretion, shall have the right to intervene in any such action or proceeding and control and direct the defense thereof at its sole cost and expense, including the right to select defense counsel.

Ownership of Intellectual Property

As used herein, any inventions, developments, processes, methods, formula, specifications, ideas, trade secrets, know how, discoveries are collectively referred to as “**Intellectual Property**.” All Intellectual Property provided by Kroger shall be “**Kroger Intellectual Property**,” while all Intellectual Property provided by Vendor shall be “**Vendor Intellectual Property**.” Any Intellectual Property which is conceived, reduced to practice, discovered, invented and/or developed pursuant to or as a result of this Agreement, whether by Vendor, by Kroger, or jointly by Kroger and Vendor, and relating to Kroger Intellectual Property or Our Brands Products, will be owned solely by Kroger. Vendor agrees to do any and all acts, and to execute any and all instruments, that may be reasonably requested by the other party to secure ownership rights of the Intellectual Property addressed above.

Intellectual Property Indemnification

Each Party (“**Indemnifying Party**”) shall defend, hold harmless and indemnify the other party (“**Indemnified Party**”) from and against any and all claims, liabilities, judgments, losses or damages (including reasonable attorneys’ fees) resulting from or arising out of any infringement, misappropriation, violation or misuse of any Intellectual Property rights (collectively, “**Infringement Claim(s)**”) asserted by any third party against an Indemnified Party in connection with the use of any of the Indemnifying Party’s Intellectual Property.

If any action or proceeding (“**Claim**”) is threatened or commenced against an Indemnified Party that the Indemnifying Party is obligated to defend, hold harmless, or indemnify, then notice thereof shall be given to Indemnifying Party as promptly as practical, provided, however, that any delay by the Indemnified Party in giving such notice shall not constitute a breach of this Agreement and shall not excuse the Indemnifying Party’s obligation except to the extent, if any, that the Indemnifying Party is prejudiced by such delay.

After such notice, the Indemnifying Party shall be entitled, if it so elects in writing within ten (10) days after receipt of such notice, to take control of the defense and investigation of such Claim and to employ and engage attorneys of its choice to handle and defend the same, at the Indemnifying Party’s sole cost and expense. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of such Claim and any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost and expense, participate through its attorneys or otherwise, in such investigation, trial and defense of such Claim and any appeal arising therefrom. In any Claim the defense of which is

controlled by Indemnifying Party, the Indemnifying Party shall not, without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed), compromise or settle such Claim if (i) such compromise or settlement would impose an injunction or other equitable relief upon any Indemnified Party, or (ii) such compromise or settlement does not include a release of the Indemnified Party from all liability relating to such Claim for which the Indemnified Party is entitled to be indemnified.

After notice by the Indemnifying Party to the Indemnified Party of its election to assume full control of the defense of any such Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses incurred thereafter by the Indemnified Party in connection with the defense of that Claim and any appeal arising therefrom. If the Indemnifying Party does not assume full control over the defense of a Claim, then the Indemnifying Party may participate in such defense, at its sole cost and expense, and the Indemnified Party may defend and/or settle the Claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party.

In addition to the foregoing, if an Infringement Claim arises from use of Vendor Intellectual Property in the Products, Vendor, at its own expense, will either (i) procure for Kroger, its successors, assigns, and customers the right to continue using the Products, (ii) replace the Products with non-infringing items, or (iii) only if options (i) and (ii) are impracticable, refund the purchase price of the Products and pay all related expenses.

Labeling and Packaging Indemnification

Vendor will protect, defend and indemnify Kroger, its parent company, divisions, subsidiaries and affiliated business entities and their respective employees, agents, officers, and directors (together, the "Indemnified Party") from and hold Indemnified Party harmless against all claims, demands, actions, liability, losses, damages, costs or expenses of any nature, including without limitation, reasonable attorney's fees, resulting from or arising out of (i) any claim that the Our Brands Products are defective, negligently manufactured in any manner, or otherwise determined to be the cause of injury or death to persons, or damage to property, or both; (ii) any claim that the Our Brands Products or the manufacture, sale or labeling of the Our Brands Products fail to comply with any governmental requirement, or the labeling on any Products, or on or within the packaging for any Our Brands Products, is false, misleading, deceptive, or inadequate in any manner; (iii) any claim that the Our Brands Products should have been recalled pursuant to any governmental requirement; (iv) Vendor's negligence or willful misconduct in manufacturing, delivering, or supplying the Our Brands Products; or (v) any claim, demand, action, suit or proceeding by any person, firm, governmental agency or corporation resulting from or arising out of (i) through (iv) above. This indemnification shall not apply if and to the extent that such injury, death or damage is directly caused solely by any of the following: (a) sale of Our Brands Products by Kroger without packaging where packaging is provided by Vendor and where such packaging contains the required labeling; or (b) gross negligence, or intentional wrongful acts or willful misconduct of Kroger.

For avoidance of doubt, this indemnification provision is in addition to and supplements the SVA and the indemnification provisions contained therein.

Product Preparation

Vendor will be responsible for package design, illustrations, photography and pre-press costs, travel, lodging, and shipping costs (collectively, “Product Preparation Costs”). Vendor may request, in advance of incurring any such costs, an estimate of the Product Preparation Costs from Kroger.

For Our Brands Products related to General Merchandise, Home and Seasonal merchandise, and Apparel, please refer to the General Merchandise link below for the updated information/requirements. <https://www.thekrogerco.com/vendors-suppliers/general-merchandise-document-library/>.

Product Disposition

Vendor will not sell or otherwise provide or deliver any Our Brands Products or any part thereof containing Kroger Trademarks or Intellectual Property to any third party without Kroger’s prior written consent. Outdated or unsaleable Our Brands Products in the possession of Vendor must be destroyed and Kroger provided with proof of destruction. Our Brands 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 Our Brands Products or packaging and Vendor’s request must be approved in writing by Kroger prior to Vendor taking any action contrary to the foregoing.

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.

FOR REVIEW ONLY