MASTER TERMS AND CONDITIONS

These Master Terms and Conditions ("Terms and Conditions") are part of an integrated agreement between Vendor and Meijer consisting of these Terms and Conditions, the terms agreed to in Meijer’s online VendorNet portal ("VendorNet" at https://www.meijervendornet.com), any Order (defined below), any specially-negotiated written agreement between the parties (including a statement of work, addendum, or memorandum of work), the terms contained in any applicable sections of the Vendor Requirements and Reference Guide ("VRRG") located at https://www.meijervendornet.com, and any other requirements, attachments or instructions referenced in these documents (collectively, the "Agreement"). The Agreement is binding as of the date above or the shipment of an Order, whichever is earlier, and applies to all goods purchased by Meijer from Vendor directly or indirectly ("Goods"), including Goods for resale to Meijer customers ("Retail Goods"), Goods for manufacturing ("Manufacturing Goods"), Goods for Meijer’s non-resale use ("Procurement Goods"), and any Services performed by Vendor ("Services"). If there is a conflict in terms, the controlling order of documents is as follows: (1) any specially-negotiated written agreement, (2) these Terms and Conditions, (3) terms agreed to in the VendorNet, (4) terms in an Order (defined below), and (5) the terms contained in any applicable sections of the VRRG.

1. ORDERS. The parties’ written or electronic agreement to these Terms and Conditions do not commit Meijer to order, purchase or accept any Goods or Services. All orders of Goods and Services (each an “Order”) will be made according to these Terms and Conditions and the applicable VRRG sections.

2. COMMERCIAL TERMS. “Commercial Terms” are terms such as pricing, shipping terms, payment terms, non-saleable disposition methods, scan-based "shrink" terms and accounting methods, own brand and control brand buy-back obligations, allowances, specification, deliverables, and other variable business terms. Commercial Terms are established as follows:

   a. Retail and Manufacturing Goods. Unless otherwise agreed in writing, all Commercial Terms for Retail Goods and Manufacturing Goods transactions will be established on the VendorNet. After information has been properly entered and accepted by the parties on the VendorNet, the Commercial Terms will contractually bind the parties as a supplement to these Terms and Conditions. Commercial Terms agreed to on the VendorNet may only be amended by updating the information on the VendorNet and electronically agreeing to the changes. Once new Commercial Terms have been properly updated and accepted by Meijer and Vendor on the VendorNet, the new Commercial Terms will contractually bind the parties and supersede any prior Commercial Terms that conflict with the new Commercial Terms.

   b. Other Goods and Services. For all other Goods and Service transactions, Commercial Terms will be established by the Agreement and/or an Order. The Commercial Terms established as stated above will contractually bind the parties as a supplement to these Terms and Conditions.

3. SET-OFFS FOR CLAIMS. All amounts payable to Vendor will be subject to all Meijer claims and defenses. Meijer may set off and deduct against any such amounts all Vendor indebtedness to Meijer. By posting on the VendorNet, Meijer will provide a debit memo or vendor charge back to Vendor stating the amount of the setoff. If Meijer posts on the VendorNet, Vendor will have unconditionally accepted each debit memo or vendor charge back within 90 days following receipt unless it notifies Meijer in writing during that period as to why the deduction should not be made. This written notice and all other Vendor claims against Meijer must be submitted to Meijer only through the Claims Management System ("CMS") on Meijer’s VendorNet. Vendor agrees to pay a reasonable administrative fee to Meijer for each claim submitted to Meijer in any manner other than through the CMS.

4. REPRESENTATIONS AND WARRANTIES.

   a. Goods. If Vendor supplies Goods, Vendor represents and warrants that all Goods and, if applicable, Retail Goods Content (defined below), produced for and shipped to or on behalf of Meijer are and will be at all times:

      (1) Manufactured, tested, packaged, wrapped, inspected, marked, sold, stored, shipped, labeled, and registered accurately and in compliance with all Meijer policies, specifications, and standards referenced herein (collectively, “Meijer Standards”), and all applicable U.S. federal, state, and local and applicable foreign laws and regulatory requirements including, but not limited to, the requirements of the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the U.S. Environmental Protection Agency; the U.S. Consumer Goods Safety Commission; the U.S. Department of Commerce; and the U.S. Customs and Border Protection; the U.S. Treasury; the U.S. Department of Labor regulations, and the International Labour Organization standards (collectively, “Laws”);

      (2) Free from defects, contamination, impurity, or adulteration; and are fit and sufficient for purposes specified herein or in any document incorporated by reference;

      (3) For Retail Goods Content, comprised of only those statements that are truthful, accurate, and not misleading and that have been substantiated, if necessary, at the time that such statements and claims are made;
(4) Comprised of only intellectual property that is owned solely by Vendor or licensed from the owner/proprietor to Vendor and does not infringe or violate any intellectual property or other proprietary rights (including any utility or design patent, trademark, service mark, trade dress, trade name, copyright, trade secret, right of privacy, publicity, moral right, or any manufacturing or administrative process) so that Vendor may freely and lawfully grant to Meijer all intellectual property and proprietary rights necessary for Meijer’s use permitted by these Terms and Conditions;

(5) For imported Retail Goods, sold to Meijer at no less than fair value under U.S. anti-dumping law, and no foreign government has provided a countervailable subsidy for the Goods actionable under applicable Laws;

(6) Not the result of forced labor, child labor, or prison labor and meet all other social compliance criteria and labor standards as determined under Meijer Standards and applicable Laws; and

(7) For imported Retail Goods, not manufactured by a subcontractor of Vendor unless such subcontracting is disclosed to and approved by Meijer in writing.

(8) If furnishing Goods or Services to Meijer’s pharmacy, Vendor warrants, represents, and covenants that Vendor is not currently and will not during the term of the Agreement be excluded from participation in federal or state health care programs and is not the subject of any known pending exclusion proceeding. Vendor, becoming aware of its violation of any of the foregoing requirements, warrants and covenants that, it will notify Meijer at PharmacyComplianceOfficer@meijer.com within 24 hours of receiving notice of Vendor’s exclusion from a state or federal health care program.

(9) For all applicable Retail Goods, Vendor warrants, represents and covenants that Vendor understands and is and will remain complaint with the requirements of the CPSC General Compliance Statement located at https://www.meijervendornet.com.

b. Services. If Vendor supplies Services, Vendor represents and warrants:

(1) That all Services will be furnished in a good, timely, professional, and workmanlike manner in accordance with best industry standards and practices and the specifications provided to Vendor;

(2) Vendor will possess all required permits, certifications, and licenses, and sufficient education, skills, and experience, to fully and lawfully perform the Services;

(3) Vendor will perform all Services in the United States of America;

(4) Vendor is responsible for the safety of any individual providing Services and will ensure that such individual complies with Meijer’s Code of Conduct located on the VendorNet;

(5) Vendor will fully comply with the requirements of the Immigration Reform and Control Act and all related authority, including but not limited to required Form I-9 completion, re-verification and retention; and

(6) Vendor will not file or claim a lien on Meijer property, and where applicable, will deliver to Meijer upon request lien waivers for any services furnished by or through Vendor.

c. Business Conditions. Regarding its financial, legal, and other business conditions, Vendor further represents and warrants that:

(1) Vendor is solvent, is not under any threat of insolvency, is able to pay its obligations as they become due, and will notify Meijer immediately if Vendor becomes insolvent or otherwise becomes unable to pay its obligations;

(2) Vendor and its management personnel have not, for at least seven years before the date of Vendor’s first shipment of Goods to Meijer, been found guilty, or pled guilty to any criminal charge;

(3) Vendor, its subsidiaries, and their directors, officers, agents, employees, or other persons associated with or acting on behalf of the Vendor or any of its subsidiaries:

(i) Are not currently in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and its rules and regulations (collectively, “FCPA”) by using corporate funds for unlawful contributions, gifts, entertainment, facilitation, or other unlawful expenses relating to political activity or to influence official action; making direct or indirect unlawful payment to a foreign or domestic government official or employee from corporate funds; or making a bribe, rebate, payoff, influence payment, facilitation payment, kickback, or other unlawful payment; and

(ii) Have disclosed to Meijer in writing any past violations of the FCPA or any other anti-bribery or anti-corruption law.

(4) Vendor’s business license is validly issued from the requisite governing authority;

(5) Vendor and its principal operators are not included on any searchable denied party or politically exposed person watch list database and will not be at any time during Meijer’s relationship with the Vendor;
6. Vendor is not prohibited from consummating the transactions contemplated by (i) an Order; (ii) any applicable law, agreement, instrument, or restriction; or (iii) a judgment, order, or decree of any governmental authority having jurisdiction over Vendor or its property; and

7. Vendor’s performance of its obligations under an Order will not be in violation of or cause a default under any applicable law, agreement, instrument, covenant, condition, restriction, judgment, order, or decree.

8. Vendor has the right and authority to enter into these Terms and Conditions and to make all of the grants and assignments and to undertake the obligations required by these Terms and Conditions.

9. Vendor knows of no condition that would be likely to limit Vendor’s ability to perform these Terms and Conditions.

d. Data. If personal data of Meijer employees or customers is created or accessed by Vendor or is in any way connected to the fulfilling of an Order, Vendor represents and warrants:

1. The handling, including the transfer itself, of any personal data by Vendor to Meijer has been, and will continue to be, carried out in accordance with all applicable data protection and privacy laws and Meijer’s standard protocol and practices;

2. Vendor will treat all Meijer personal data confidentially and handle the data in accordance with all applicable data protection and privacy laws and applicable provisions of the Agreement;

3. To deal promptly and properly with all reasonable inquiries from Meijer, a data subject, or a competent supervisory authority relating to Vendor’s handling of personal data;

4. Vendor will notify Meijer of any request for personal data from any governmental agency and must obtain Meijer’s consent prior to the release of personal data to any governmental agency; and

5. If credit card information is handled by Vendor, Vendor will comply with PCI Security Standards Council® standards for handling and processing credit card information.

The warranties contained in these Terms and Conditions or any document referenced herein are in addition to all other warranties, express, implied or statutory; will survive Meijer’s payment, acceptance, inspection or failure to inspect the Goods; and will run to Meijer and its customers. Vendor cannot limit or disclaim these warranties. If supplying Retail Goods, Vendor will provide Meijer with adequate material for distribution to Meijer’s customers regarding disclosure of warranty terms as required by all U.S. federal, state, and local laws, rules, and regulations. Meijer may avail itself of all remedies available at law or in equity for any breach of these warranties. At the request of Meijer, Vendor will provide to Meijer reasonable evidence of Vendor’s compliance with the above warranties. Vendor will be considered to have made these representations and warranties anew upon acceptance of each Order.

5. INDEMNITY. Vendor agrees to indemnify, defend, and hold harmless Meijer; its parent, subsidiary, and affiliated companies, and their respective officers, directors, shareholders, partners, employees, and agents (“Related Parties”) from and against any and all claims, demands, actions, proceedings, lawsuits, fees, government-imposed fines or penalties, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable actual attorneys’ fees, internal legal personnel and administrative costs, expert witness fees, and all other costs of litigation) brought, imposed, or alleged by a third party, Vendor’s employees or agents including those actually or allegedly arising out of the bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use and proprietary rights infringement) against Meijer or any Related Party arising out of (i) any breach of the Agreement; (ii) the infringement (directly, indirectly, contributorily, or by inducement), misappropriation or other violation, of any third party’s patent, trademark, copyright, trade secret, or other proprietary rights involving the Goods or Services provided under the Agreement; (iii) the presence of Vendor’s employees, agents, contractors, subcontractors, or equipment at a Meijer facility; (iv) Vendor’s violation of law; (v) data breach; (vi) the negligent, willful or fraudulent act or omission of Vendor or any of Vendor’s employees, agents, contractors, or subcontractors; (vii) the use, operation, placement, maintenance, repair or removal of any equipment owned by Vendor that is located on or about Meijer’s (or its affiliates’) premises; or (viii) with respect to Retail Goods, any handling, shipment, delivery, stocking, consumption, or use thereof. These indemnity and defense obligations include claims of Vendor’s employees, agents, contractors and subcontractors and claims alleging or involving Meijer’s joint, concurrent, or comparative negligence. Vendor agrees to give Meijer the right to approve or select counsel for defending Meijer or the Related Parties against any and all claims, liability, and damages covered by this indemnity provision. The indemnification obligations under this section are not limited in any way by insurance limits or any limitation on the amount or type of damages, compensation, or benefits payable by or for the Vendor or anyone directly or indirectly employed by them under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

6. INSURANCE COVERAGE.

a. Required Coverages. Vendor must keep in force, at Vendor’s sole expense, insurance coverage covering claims arising out of Vendor’s obligation under the Agreement, including the following insurance coverages (“Required Coverages”):
(1) Commercial General Liability ("CGL"), including coverages for premises/operations, products/completed operations, independent contractors, broad form property damage, personal/advertising injury, and blanket contractual liability, in an amount not less than $3,000,000.00 per occurrence ($5,000,000.00 per occurrence for all own brand, control brand and manufacturing Goods), and $5,000,000.00 in the aggregate. The CGL policy may not include any exclusions or endorsements that limit coverage for claims from incidents that are also covered by workers’ compensation or employer liability insurance. Meijer, Inc. and its subsidiaries must be named as additional insureds on an endorsement acceptable to Meijer that extends coverage to contractual liability. Meijer agrees that Vendor’s CGL Policy may be maintained by a combination of Vendor’s base policy in an amount no less than $1,000,000.00 per occurrence and an umbrella or excess policy, provided that such umbrella or excess policy meets all the requirements of this Section.

(2) For domestic Vendors only, Automobile Liability coverage for all owned, hired, and non-owned vehicles with a combined single limit not less than $1,000,000.00.

(3) For domestic Vendors only, Workers’ Compensation coverage (including an alternate employer endorsement) for Vendor’s employees and contractors with statutory limits and Employer’s Liability coverage in an amount not less than $500,000.00. If any state workers’ compensation law requires an express waiver by Vendor for Meijer to obtain indemnification from Vendor under the indemnification provision contained in the Agreement, this provision will be considered such waiver.

(b) Policy Requirements. Required Coverages must (1) be either an occurrence policy in effect through the expiration or termination of the Agreement or a claims-made policy to be maintained in force through and for three (3) years following the expiration or termination of the Agreement; (2) not contain a self-insurance retention; (3) not contain any exclusion for punitive damages where allowable by applicable law; (4) contain a specific provision that defense costs are supplemental and do not erode or exhaust the policy limits; (5) contain a specific provision waiving any and all rights of recovery, contribution, and subrogation against Related Parties and all of their respective insurers; (6) cover claims brought in the United States of America; (7) carry a commercially reasonable deductible or retention amount; (8) contain a provision that coverages evidenced will not be adversely modified or canceled without providing at least 10 days’ prior written notice to Meijer; (9) afford primary coverage; and be underwritten by an insurance carrier with an A.M. Best® rating of “A-” or better. Vendor will be solely responsible for payment of any deductible or retention.

(c) Required Policy Certificates. Vendor must, within ten (10) days following execution of the Agreement, and on each annual anniversary of the execution of the Agreement, provide evidence of all Required Coverages to Meijer’s insurance consultant at mejercerts@vanwykcorp.com. If Vendor fails to timely provide proof of insurance, Meijer will have the right (but not the obligation) to terminate the Agreement or to stop or delay any payments to Vendor until proof of insurance is received. Such termination, stop, or delay will not change the terms of any SOW or be grounds for a cause of action against Meijer. Meijer’s failure to stop or delay any payment, acceptance of an endorsement not compliant with this Section, or failure to identify non-complying coverage will not be construed as a waiver of Vendor’s obligations under this Section. Promptly upon the request of Meijer, Vendor must provide full copies of all insurance policies and declarations that establish the Required Coverages.

(d) Effect on Indemnity Obligations. Vendor’s indemnity obligations and direct liability to Meijer specified in the Agreement will not be negated or reduced because Vendor has maintained the Required Insurance or because Vendor’s insurance carrier denies insurance coverage for, or refusal to defend, a claim for which Vendor is liable to Meijer under the Agreement.

(e) Vendor’s Property. Vendor agrees that Vendor’s own equipment and personal property is at Vendor’s own risk, wherever located. Vendor must insure Vendor’s own equipment and other personal property. Vendor releases Meijer from any loss, theft, damage, or destruction to Vendor’s equipment or other personal property Vendor brings onto facilities or locations of Meijer or Meijer’s Affiliates in furtherance of furnishing Goods or Services.

(f) Waiver of Subrogation. To the extent any claim and loss is covered by the Required Coverages, Vendor waives all rights against Meijer and Meijer’s contractors, consultants, agents, and employees for damages, except for Vendor’s right to the proceeds of the Required Coverage. Vendor must require that all of Vendor’s contractors, consultants, agents, and employees give the same waiver in favor of Meijer.

(g) Increased and Additional Insurance Coverages. Vendor acknowledges (i) that the insurance coverage requirements of this Section constitute Meijer’s minimum requirements for insurance coverages required of vendors and (ii) that a specific Service may require increased or additional insurance coverages for the nature of the Goods or Services.

7. CONFIDENTIALITY. As used in this section, “Confidential Information” means all information in any form (written, verbal or graphic, including such information stored on videotape or computer media), whether or not marked “Confidential,” including all product designs, product styles, product sourcing or product quantities; product plans, patterns or
prints; computer software programs (both source and object code); computer hardware features and functionality; computer networks and systems; copyrights; trademarks; specifications; retail procedures; quality control data; trade and business secrets; financial and sales data; customer information including names, addresses, or other identifying information; personnel data; vendor relationships; business plans and projections; future new market areas; existing and contemplated investments; formulas; procedures; processes; contracts; correspondence; and similar or dissimilar information relating to a party’s business that is labeled as confidential or that a reasonable person ought to know is confidential. The receiving party will not copy, publish, or disclose the Confidential Information and will hold it in strict confidence. The receiving party may disclose the Confidential Information only to those of its agents, representatives, and contractors having a need to know the Confidential Information and who have been advised of the receiving party’s obligations herein. The receiving party will use the Confidential Information only for purposes directly related to the contemplated business transactions between the parties. Upon the disclosing party’s request, the receiving party will promptly destroy all Confidential Information and deliver a sworn statement to the disclosing party describing the circumstances of the destruction. The restrictions contained in this section do not apply to the receiving party’s use or disclosure of information that: (i) the receiving party independently develops; (ii) the receiving party receives from a third party whose disclosure does not violate any confidentiality law or obligation; (iii) is or becomes generally available to the public or in the industry in which the either party operates by means other than the receiving party’s unauthorized disclosure; (iv) at the time of disclosure the receiving party knew to be free of any obligation to keep it confidential, as evidenced by documentation in the receiving party’s possession; (v) the disclosing party agrees in writing is free of such restrictions; or (vi) the receiving party is compelled to disclose by law, but the receiving party will give reasonable notice to the disclosing party before disclosing the Confidential Information. No license under any trademark, patent, copyright, or any other intellectual property right is either granted or implied by the disclosing party’s disclosure of Confidential Information. Nor does disclosing Confidential Information constitute the disclosing party’s representation, warranty, assurance, guarantee, or inducement concerning the non-infringement of trademarks, patents, copyrights, mask-work protection rights, any other intellectual property rights, or other rights of third persons. Confidential Information may be now protected or become protected by U.S. property rights, or other rights of third persons. Confidential Information consisting of trade secrets will survive the termination of this agreement for any reason and will continue according to trade-secret law. If the receiving party is acquired by, merges with, or acquires a third party during the term of this agreement, this agreement shall be binding on a party’s successors and permitted assigns. The receiving party represents to the disclosing party that the receiving party is under no known obligation that would restrict it from complying with these confidentiality requirements.

8. GOVERNING LAW; DISPUTE RESOLUTION.

a. Governing Law. Any Order, these Terms and Conditions, and all other contract documents referred to in those agreements, and all matters arising directly or indirectly from those agreements, including tort claims, will be construed only under Michigan law, excluding its choice of law provisions. The UN Convention on the International Sale of Goods will not apply to any transaction between the parties.

b. Arbitration. Any controversy or claim arising relating to any Order will be determined only by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The dispute will be heard and determined by one arbitrator if the claim is less than US$1 million (exclusive of interest) and three arbitrators if the claim is US$1 million or more (exclusive of interest), at least one of whom will be an attorney. If there are three arbitrators, the parties agree that one arbitrator will be appointed by each of the parties, and the third arbitrator will be appointed by agreement of the party-appointed arbitrators. No arbitrator has the authority to: (i) award relief in excess of what the Agreement provides; (ii) award punitive damages or any other damages not measured by the prevailing party’s actual damages; or (iii) order consolidation or class arbitration. Further, the arbitrators must give effect to any limitations on either party’s liability stated in the Agreement or in any applicable tariff, law, or regulation. The arbitration will be in Kent County, Michigan. The arbitration hearing will be held within 120 days of the date of the initial or preliminary hearing or conference. Any judgment on the award rendered by the arbitrators will be final and may be entered in any court having proper jurisdiction. The existence or results of any arbitration and any evidence presented during the course of the arbitration is considered Confidential Information.

c. Third Party Claims. The arbitration provision above will not apply if a third party asserts a claim against either party in a court of law. In that event, the party over whom the claim is asserted by the third party may elect to submit any related dispute between the parties to the litigation by joining such dispute to the third party claim litigation rather than arbitrating such claim as required by this section. This section does not prevent either party from seeking injunctive relief, including specific performance, against the other party in any court of competent jurisdiction.
before the commencement of arbitration or the joining of a dispute with a third-party claim.

9. RETAIL GOODS CONTENT LICENSE. Retail Goods descriptions, knowledge sheets, feature/benefit information, photography, images, graphics, video animation or interactive media, graphics, audio, website addresses, trademarks, logos and other content or intellectual property furnished by Vendor to Meijer or its agent is considered “Retail Goods Content.” Vendor grants to Meijer a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use the Retail Goods Content (i) in any advertisement or display of the Retail Goods on Meijer-owned websites and in any other marketing or advertising media that Meijer or its agent chooses in the exercise of its sole discretion to promote Retail Goods sales, and (ii) with respect to own-brand or control-brand Retail Goods, on the packaging and labeling of a Goods.

10. PROPRIETARY AND INTELLECTUAL PROPERTY RIGHTS. Unless otherwise agreed in writing between the parties, all proprietary and intellectual property rights, title and interest in labels, plates, artwork, drawings, vignettes, specifications, patterns, recipes, formulae, packaging, designs, mask works, ideas, concepts, trade secrets, technical data, inventions (whether or not patented) works of authorship, processes, materials, specifications, reports, surveys, know-how, information relating to research and development, engineering, marketing, finances, financial models, pricing, customer lists, investors, employees, business and contractual relationships, business plans and strategies, or any other like item, if created by Meijer, created specially by Vendor for Meijer, or created jointly with Meijer, will vest absolutely, exclusively, and unconditionally with Meijer upon their creation without the need for any further act by Meijer. Vendor hereby assigns all such intellectual property rights it has in such work product to Meijer. Vendor agrees, at its expense, to perform all acts considered necessary by Meijer in obtaining and enforcing the full benefits, enjoyment, rights, and title throughout the world in the intellectual property rights assigned to Meijer under these Terms and Conditions. Vendor is permitted to retain copies of work product for archive purposes only.

11. TRANSITION ASSISTANCE. If these Terms and Conditions are terminated or an Order cancelled for any reason, Vendor will provide all reasonable transition assistance requested by Meijer, including the continued sourcing of the Goods for a period of time up to 90 days after the termination or cancellation. This transition assistance will be governed by these Terms and Conditions, except for those provisions that do not reasonably apply to transition assistance. Meijer will pay the Vendor for any resources used in performing the transition assistance at Vendor’s documented cost.

12. OWNERSHIP OF FIXTURES AND GOODS SAMPLES. If Vendor provides Meijer with any materials, equipment, or fixtures to assist in any way with the resale of any Goods purchased from Vendor, then unless otherwise agreed in writing, Meijer will be considered the sole owner of such materials, equipment or fixtures, without charge, free and clear of any interest, of Vendor. This provision will apply regardless of whether the materials, equipment, or fixtures are shown on an Order. Vendor must pay for all samples and freight for samples that are part of the usual means of doing business. This includes samples for planogram, specification approval, production samples, ad samples and any other samples that need to be modified or corrected. Planogram samples must be sent to the Meijer Planogram Room freight prepaid.

13. SURVIVAL. The following will survive termination of these Terms and Conditions: (i) all obligations arising before their termination and (ii) all provisions allocating responsibility or liability between Meijer and Vendor.

14. ASSIGNMENT. Meijer has the right to assign all or part of any Order to a parent, subsidiary, or affiliated entity with notice to Vendor. All other assignments by either party require the prior written consent of the other party. Any assignment contrary to this section is void.

15. NOTICES. Notices required to be sent to Vendor by Meijer by these Terms and Conditions (except for routine business communications) must be in writing and may be sent to Vendor through email to the most current email address Vendor has provided to Meijer through the VendorNet or by certified mail or by a national overnight courier providing evidence of delivery (such as Federal Express, UPS, DHL, or Airborne) to the most current address Vendor has provided to Meijer through the VendorNet. Notices required to be sent to Meijer by these Terms and Conditions (except for routine business communications) will be sent by certified mail or by a national overnight courier providing evidence of delivery (such as Federal Express, UPS, DHL, or Airborne) to 2350 Three Mile Road, Grand Rapids, Michigan 49544 to the attention of Vendor Management with a copy emailed to Meijer’s Senior Vice President and General Counsel at contractreview@meijer.com. All notices will be considered to have been given on the day of receipt (or refusal to accept delivery).

16. SEVERABILITY. The invalidity or unenforceability of any term or provision of the Agreement will not affect or impair the validity of any other provision or term.

17. NO PARTNERSHIP. The relationship between Meijer and Vendor is that of an independent contractor. Meijer does not, in any way or for any purpose, become a partner joint venture, joint employer, fiduciary, or a member of a joint enterprise with Vendor. Vendor has no authority to bind or commit Meijer to any obligation with any third party.

18. PUBLICITY. Except for any announcement intended solely for internal distribution or any disclosure required by legal, accounting, or regulatory requirements beyond either party’s
reasonable control, all media releases, public announcements, or public disclosures (including promotional or marketing material) by a party or a party’s employees or agents concerning the Agreement or its subject matter, or including the name, trade name, trademark, or symbol of the other party, are prohibited without the other party’s prior written consent.

19. **WAIVER.** A party’s failure to insist upon or confirm the other party’s performance of any provision of these Terms and Conditions will not be considered a waiver of such provision. No act, omission, or oral statement constitutes a waiver unless confirmed in writing by the waiving party. No such waiver by either party is a waiver of any subsequent default unless specifically so stated in writing.

20. **LIMITATION OF ACTIONS.** Any legal action by Vendor against Meijer for nonpayment must be commenced within the earlier of one year after Goods are shipped.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in Vendor’s performance of its obligations under these Terms and Conditions.

22. **FORCE MAJEURE.** Either party to these Terms and Conditions will be relieved of its responsibilities and obligations hereunder when performance becomes commercially impossible because of a Force Majeure event. If industry-wide developments occur that are beyond the control of the parties, the parties agree to negotiate in good faith a mutually acceptable strategy to address such developments. For purposes of these Terms and Conditions, “Force Majeure” shall include, but not be limited to fire, explosion, strike, riot, accident, flood, storm, earthquake, volcanic activity, tidal wave, acts of God, outbreak of disease (including animal diseases), government regulations, intervention, war, military operation, and act of terrorism or national emergency within or involving the United States of America, embargo or declaration of martial law.

23. **AMENDMENT.** Meijer may amend these Terms and Conditions (including the documents incorporated by reference herein) from time to time by posting an amended version at https://www.meijervendornet.com and sending Vendor notice. The amendment will be considered accepted and become effective 30 days after notice is given unless Vendor provides notice to Meijer. Vendor’s continued selling of Goods to Meijer following the effective date of an amendment will confirm Vendor’s consent to the amendment.

24. **SECURITY PROCEDURES.** For all imported Goods, Vendor will comply with Meijer’s C-TPAT current procedures and the terms of the U.S. Customs Service C-TPAT security recommendations, which can be found at: http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism.

25. **ANTITRUST ASSIGNMENT.** Vendor hereby conveys, assigns and transfers to Meijer one hundred percent (100%) of all right, title and interest in and to all causes of action and any proceeds resulting from such causes of action which Vendor has or may have against any third party under the antitrust laws of the United States or the common or statutory law of any State arising out of or relating to Vendor’s purchase of Goods which were subsequently resold to Meijer at any time in the past, as well as during the term of these Terms and Conditions. This assignment of claims may be further evidenced by an agreement between Vendor and Meijer upon Meijer’s request, which Meijer agrees to execute to further evidence or effectuate this assignment. Meijer and Vendor agree that each party has the full right and responsibility to prosecute its portion of any claim independent of the other party and that each has no obligation to coordinate with or notify the other of its actions. Nevertheless, the parties agree to cooperate with each other as reasonably necessary to assist the other with its portion of any claim. Each party will bear its own expenses, including without limitation the cost of responding to discovery, copying documents, data retrieval, and reasonable attorneys’ fees that it incurs in connection with the prosecution of: i) its portion of any claim, or ii) its assistance with the prosecution of the other party’s claim. Upon Meijer’s request, Vendor agrees to provide all necessary records related to the claims assigned herein and to make witnesses available to be interviewed and testify.

26. **REMEDIES CUMULATIVE.** The remedies provided in these Terms and Conditions are cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by the party of any other rights or the seeking of any other remedies.

(end)