

## US FOODS, INC. PURCHASE ORDER TERMS AND CONDITIONS

US Foods Inc. (“US Foods”) hereby retains the supplier (“Supplier”) set forth in the order form into which these terms and conditions are incorporated by reference (including attachments thereto, the “Order Form”) on the terms and conditions hereinafter stated (including terms and conditions that are incorporated herein by reference, the “Purchase Order Terms and Conditions,” and together with the Order Form, the “Purchase Order”) to supply the materials, supplies, items or equipment (the “Products”) and/or perform the services (the “Services”), as the case may be, described in the Order Form. Nothing in this Purchase Order shall be interpreted to prevent US Foods from obtaining from any other third party, or providing to itself, any or all such Products or Services or from ceasing to use Supplier to provide such Products or Services.

In the event of a conflict or inconsistency between any of the provisions of this Purchase Order and any of the provisions of a written agreement between US Foods and Supplier (“Agreement”) covering the subject matter of this Purchase Order, the provisions of the Agreement shall govern and supersede any such conflicting or inconsistent provisions of this Purchase Order. In the absence of an Agreement, this Purchase Order constitutes the entire agreement of the parties with regard to the subject matter, and supersedes all previous written or oral representations, agreements and understandings between US Foods and Supplier and any different or additional terms and conditions. In the event of a conflict or inconsistency between any of the provisions of the Purchase Order Terms and Conditions and any provisions of the Order Form covering the subject matter of this Purchase Order, the provisions of the Purchase Order Terms and Conditions shall govern and supersede any such conflicting or inconsistent provisions of the Order Form.

Supplier’s acceptance of this Purchase Order may be in writing, email, fax, EDI or other manifestation of acceptance such as, but not limited to, Supplier’s initiation of performance, or through Supplier’s provision of any Products or Services covered by this Purchase Order, or through Supplier’s acceptance of any payment made pursuant to this Purchase Order, whichever occurs first. Except to the extent expressly accepted in writing by US Foods, US Foods hereby affirmatively rejects any different or additional terms and conditions proposed by Supplier or contained in any acknowledgement, invoice or other form of Supplier, notwithstanding US Foods’s acceptance or payment for any Products or Services or any similar act of US Foods.

### 1. PRICE; INVOICING; PAYMENT

(a) Price. The price for the Products shall, as applicable, cover the net weight of the Products, and no extra charge of any kind, including charges for boxing, packaging or crating, shall be allowed unless specifically agreed to in advance in writing by US Foods. The price for Services shall cover all activities required to perform the Services as contemplated in this Purchase Order.

Vendor shall notify US Foods not less than sixty (60) days prior to the implementation of any price changes. Such proposal must be Supplier’s most favorable pricing for Goods or Services of like specification, grade or quality manufactured by or provided by Supplier and must be competitively priced with Goods or Services of like grade or quality from other vendors. Any price change must be accepted by US Foods in writing within thirty (30) days of receipt of a price change notice. In the event the parties agree on new pricing terms, such new pricing will be implemented on the 1st of the month which is at least sixty (60) days following the date of the notice of such new pricing. In the event US Foods does not accept such price change, Supplier has seven (7) days to provide written notice to US Foods that it is electing to terminate this Agreement, which termination will be effective thirty (30) days from such termination notice, otherwise existing pricing will continue.

(b) Taxes. The amount of taxes imposed, if any, will be separately stated on the Order Form and any

related invoice and all amounts shown will include all federal, state and local sales, use, excise and similar taxes applicable to the Products or Services sold or provided under this Purchase Order or the materials used in connection therewith; and Supplier shall pay any and all such taxes, except taxes required by Law (as defined in Section 6(a) below) to be paid or borne by US Foods. Notwithstanding the foregoing, US Foods and Supplier shall each bear sole responsibility for all taxes of any kind imposed by a federal, state, local, or foreign governmental authority, directly on said party, including, but not limited to, those on, or measured by or referred to as income, gross receipts, financial operations, franchise, profits, license, excise, premium, windfall profits taxes, duties or similar fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by such governmental authority with respect to that party's income, operations, employment, property (whether owned, leased or deemed to be owned or leased) or business operations. If Supplier fails to properly invoice or collect taxes from US Foods, Supplier agrees that US Foods shall have no liability to Supplier for any taxes, penalties, or other sums relating to such failure and shall indemnify US Foods against any third party claims for the same.

(c) Invoice; Payment; Billing Disputes. Unless otherwise specified by US Foods, Supplier shall invoice US Foods for the Products or Services provided under this Purchase Order only after the Products or the Services are received by US Foods. Final payment shall not be made until the Products or Services provided meet the requirements specified in this Purchase Order. Unless otherwise specified by US Foods on the applicable Order Form, payment terms shall be net sixty (60) days after US Foods's receipt of the applicable invoice submitted in accordance with, and containing any information specified on, the applicable Order Form. Supplier shall submit all payment disputes, including those regarding deductions, short payments and non-payment of invoices by US Foods ("Payment Disputes") within one-hundred-eighty (180) days from the date of the US Foods check associated with the deduction or short payment (this includes back-up requests) or the due date of the invoice, for Payment Disputes alleging non-payment of an invoice. Payment disputes MUST be greater than \$20. Supplier will have thirty (30) days to contact the Vendor Support Center and provide additional supporting documentation and/or clarification in the event US Foods denies any claim made as part of a Payment Dispute. The Vendor Support Center may be reached by phone at 480-766-7000. US Foods may set off any amount owing from Supplier to US Foods against any amount payable by US Foods. US Foods may withhold payment of any invoiced amounts that it disputes in good faith and the parties shall work in good faith to resolve any such billing disputes. Any such billing disputes shall not be cause for Supplier's nonperformance of Services and/or non-delivery of Products, as the case may be, under this Purchase Order. Payment by US Foods shall not result in a waiver of its rights under this Purchase Order. Further, Supplier shall perform its obligations under this Purchase Order in a manner that meets or exceeds the service levels, if any, set forth in this Purchase Order. If Supplier fails to meet any such service levels, Supplier shall perform a root cause analysis of such failure and shall promptly take corrective actions. Additionally, in the event of any such failure, US Foods shall receive the service level credits, if any, set forth in this Purchase Order. Service level credits shall not be deemed US Foods's sole and exclusive remedy for any failure by Supplier to achieve service levels. In order to be eligible for reimbursement by US Foods of reasonable out-of-pocket travel and travel-related expenses incurred by Supplier Personnel (as defined in Section 6(a) below) in providing the Products and/or Services hereunder, all such expenses incurred by Supplier: (i) must have been pre-approved by US Foods in writing prior to the date such expenses are incurred; and (ii) must be in compliance with US Foods's travel and entertainment guidelines, as supplemented and/or amended from time to time. Supplier will (i) provide truthful and complete documentation supporting, in reasonable detail, the delivery of the Products or the Services performed and any expenses incurred, (ii) maintain true, accurate, and complete invoices, reports, statements, books, and other records, and (iii) secure pre-authorization in writing from US Foods for any extraordinary expenditure.

(d) Most Favored Customer Status. The parties intend that US Foods shall have the status of a "most-favored customer" with respect to matters of pricing, availability, and other terms. Supplier represents and warrants that the prices and other terms provided to US Foods under this Purchase Order are not less favorable than those extended to any of its other customers for similar Product and Services under reasonably similar circumstances and, in the event that Supplier provides any of its other customers with more favorable prices or other terms, Supplier shall immediately provide that more favorable price or other term to US Foods.

## 2. DELIVERY; CANCELLATION; INSPECTION; ACCEPTANCE

(a) Product Delivery. Supplier shall be responsible for packaging, loading and shipping the Products in accordance with any packaging specifications, shipping methods and other related requirements set forth in this Purchase Order or otherwise communicated in writing or by other means to Supplier by US Foods. If no such specifications, methods or requirements are so specified, Supplier shall be responsible for packaging, loading and shipping the Products in a manner sufficient to prevent damage and loss to the Products during shipment. Shipments must equal quantity ordered, unless otherwise agreed to by US Foods. Supplier shall provide a packing list to US Foods (which shall be securely attached to the outside of the package) for all shipments referencing this Purchase Order number. Unless otherwise specifically provided for herein, Supplier shall be responsible for freight and delivery to the destination specified on the applicable Order Form. All freight and delivery charges will be borne by Supplier, unless specifically agreed to in advance by US Foods. Provided US Foods agrees to accept such freight and delivery charges in advance, the amount allocated for product freight delivery will be separately stated on the Order Form and any related invoice, and all amounts shown will include all packaging, loading and shipping applicable to the Products or Services sold or provided under this Purchase Order or the materials used in connection therewith. Under no circumstances will Supplier include in such charges, or will US Foods bear, additional or charges related to the freight and delivery of covered Products and/or Services, including, but not limited to, fuel surcharges, energy surcharges, or seasonal surcharges, whether originated by Supplier or on behalf of any third party. Notwithstanding any provision in this Purchase Order to the contrary, Supplier shall bear all risks of loss and damage to the Products until final acceptance by US Foods at US Foods's "ship to" destination specified on the applicable Order Form. Further, Supplier shall bear the same risks with respect to any Products rejected by US Foods or as to which US Foods has revoked its acceptance from the time of such rejection or revocation. Supplier's shipper must certify that freight is sorted or segregated as require by USF. In the event Supplier has supply issues, it shall rank US Foods first for delivery of the Products and secure such first rank.

(b) Customs Clearance. For shipment of Products imported into the commerce of the United States, Supplier shall promptly provide US Foods with a commercial invoice that includes the information required by 19 CFR 141.86, as supplemented and/or amended from time to time. Supplier shall remain fully responsible for its compliance obligations under this Purchase Order.

(c) Material Safety Data Sheets. Supplier shall provide to US Foods all information related to the safety, safe handling, environmental impact, and disposal of the Product including, without limitation, material safety data sheets. Supplier shall promptly deliver to US Foods, as it becomes available to Supplier, any updates or amendments to the information, including those made to address the United Nations Globally Harmonized System of Classification and Labeling of Chemicals' requirements, provided pursuant to this Section and any new information relating to the safety, safe handling, environmental impact, or disposal of the Product.

(d) Cancellation. The delivery of Products and/or Services shall strictly comply with the delivery date or delivery schedule, if any, specified by US Foods. If at any time it appears that Supplier will not meet such delivery date or schedule, Supplier shall promptly notify US Foods in writing of reasons for, and the estimated duration of, the delay. If requested by US Foods, Supplier shall ship delayed Products by means to avoid or minimize delay to the maximum extent possible, any added cost to be borne by Supplier. In

addition to its other remedies, US Foods reserves the right to cancel all or any part of any Purchase Order for the undelivered Products or unperformed Services if Supplier does not deliver the Products or perform the Services as specified in this Purchase Order.

(e) Changes. Supplier acknowledges and agrees that US Foods may provide Supplier with a request for changes to the Services and/or Products, as the case may be, from time to time. US Foods and Supplier shall review all such requests to determine the effect, if any, such requested changes may have upon fees payable, delivery schedule, and other terms and conditions of this Purchase Order. After such effects have been assessed, US Foods may decide, in its sole discretion, whether to implement such changes. If US Foods elects to implement such changes, it shall provide a revised Purchase Order to Supplier. Such revised Purchase Order shall be subject to all of the terms and conditions herein.

(f) Inspection; Acceptance of Products and Services. All Products or Services delivered or performed shall be subject to final review, inspection and acceptance by US Foods, notwithstanding any payment or initial inspections. Acceptance of Products and Services shall occur when the Products or Services delivered under the this Purchase Order have been inspected by US Foods and determined to meet the requirements specified in this Purchase Order. US Foods shall make such inspection within a reasonable period of time (not to exceed ninety (90) days) after the applicable Products have been delivered or Services completed by Supplier. For the avoidance of doubt, there shall be no time restrictions applicable to US Foods's provision of notice of rejection of any Product with respect to any latent defects, which shall include any defects that may not be detected by US Foods through standard inspection and testing of a Product sample or that may affect only a portion of Product. If the Products or Services do not meet such requirements, US Foods shall give Supplier detailed written notification of the deficiency or non-conformance and a direction to Supplier to promptly (and in any event within thirty (30) days): (i) repair, replace or re-perform the deficient or non-conforming Products or Services; or (ii) cease all Supplier activities related to Products or Services; and/or (iii) refund to US Foods all fees paid by US Foods hereunder for the deficient or non-conforming Products or Services and those Products or Services that are dependent on such deficient or non-conforming Products or Services. Any such corrected Products or Services shall be subject to the same inspection and acceptance terms provided for in this Section 2(f). If US Foods directs Supplier to repair, replace or re-perform the deficient or non-conforming Products or Services and Supplier fails to complete same within thirty (30) days after US Foods's direction, then Supplier shall refund to US Foods all fees paid by US Foods hereunder for the deficient or non-conforming Products or Services and those Products or Services that are dependent on such deficient or non-conforming Products or Services. Inspection and acceptance of any Products or Services by US Foods shall not affect Supplier's warranties or US Foods's remedies under Section 6(a) below. The foregoing shall not be construed to limit or exclude any other rights or remedies of US Foods at law or in equity.

(g) Sustainable Shipping and Packaging. (a) In the event Supplier is responsible for selecting the carrier pursuant to Section 2(a), Supplier shall designate a carrier who will and shall use its best efforts to ensure that its designated carrier minimizes transportation charges and reduce fuel usage and greenhouse gas and air pollutant emissions via route optimization and efficiency, increases use of hybrid vehicles, natural gas vehicles, electric vehicles, or other vehicles that reduce emissions of carbon dioxide, and decreases idling times; provided that such efforts shall not impair Supplier's performance under this Purchase Order. Supplier shall improve energy efficiency, reduce fuel usage and reduce greenhouse gas and air pollutant emissions during the transport of Products or services by contracting with third party transporters for the shipment of the Products who are top scoring EPA SmartWay Transport partners or affiliates (as defined by the SmartWay Program), wherever possible. To the extent the Products are transported other than in the U.S., Supplier shall cause its designated carriers to participate, to the extent possible, in comparable programs. (b) Subject to any cGMP requirements and US Foods's specifications, Supplier agrees that the packaging, overwraps, envelopes, boxes, labels, tags and paper it provides to US Foods shall consist of as much recycled content as is commercially reasonably available, but no less than 30% recycled content, including a minimum of 10% post-consumer content. Supplier shall use Forest Stewardship Council or other reputable third party certified sustainable paper content and recyclable packaging materials wherever commercially feasible. There shall be no additional charges for such

packing, packaging or cartage unless such charge is authorized on the face of this Purchase Order.

### 3. ENVIRONMENTAL, HEALTH AND SAFETY MATTERS

(a) Supplier shall comply and shall ensure that the Product and/or Services comply with all applicable Environmental Laws (as defined herein). With respect to all environmental, health and safety matters related to Supplier's (including Supplier Personnel) activities in providing Products and/or Services to US Foods, Supplier shall: (a) inform US Foods promptly of any significant adverse event (e.g., fires, explosions, accidental discharges) that have affected or have the potential of affecting (i) the quality of the Products and/or Services to be delivered and/or (ii) any US Foods facility, property or asset; (b) inform US Foods promptly of any allegations or findings of violations of applicable Laws, including Environmental Laws, that have affected or have the potential of affecting (i) the quality of the Products and/or Services to be delivered and/or (ii) any US Foods facility, property or asset and any individual located at those locations; and (c) implement promptly any corrective action which may be reasonably requested by US Foods, including, without limitation, adhering to reasonable and significant elements of the environmental, safety and industrial hygiene program adhered to by US Foods in its own operations.

(b) "Environmental Laws" means any applicable international, federal, state and local laws, statutes, ordinances, codes, rules and regulations, orders, decrees or other pronouncements of any governmental, administrative or judicial authority having the effect of law relating directly or indirectly to (i) the protection of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface or subsurface land); (ii) the protection and occupational health and safety of workers and employees; or (iii) the registration, licensing, notification, warning or other governmental approval of the Product and/or Service or any ingredients, by-products, intermediates thereof (including, but not limited to laws such as California Safe Drinking Water and Toxic Enforcement Act of 1986, Toxic Substances Control Act, or the EU Registration, Evaluation, Authorisation and Restriction of Chemicals); or (iv) the exposure to, or the use, transportation, storage, recycling, reuse, treatment, generation, labeling, protection, release or disposal of any and all Hazardous Materials. "Hazardous Materials" means any (a) petroleum or petroleum products, byproducts or breakdown products, radioactive materials, toxic mold, radon, asbestos or asbestos-containing materials, lead-based paint, urea formaldehyde foam insulation or polychlorinated biphenyls; (b) any chemicals, materials, substances, compounds, or mixtures, products or byproducts, biological agents, living or genetically modified materials that are now or hereafter become defined, characterized as or included in the definition, or otherwise determined to be "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "special waste," "toxic substances," "pollutants," "contaminants," "toxic," "dangerous," "corrosive," "flammable," "reactive," "radioactive," or words of similar import, under any Environmental Law; and (c) any other substance or waste that is now or hereafter prohibited, limited or regulated by any regulatory authority.

#### 4. RECORD RETENTION; AUDIT

Supplier shall provide (and shall cause each Supplier subcontractor to provide) to US Foods or its representatives, including its external auditors and to any governmental authority access at all reasonable times and after reasonable notice (except in the case of an audit by a governmental authority) to any facility of Supplier (and each Supplier subcontractor), Supplier Personnel, and to data and records, in each case relating to the Products and/or Services provided hereunder and Supplier's performance under this Purchase Order, for the purposes of: (a) performing audits and inspections to verify the integrity and security of US Foods data and to examine the systems that process, store, support and transmit that data and to ensure that US Foods is compliant with all Laws; (b) observing Supplier's performance of its obligations under this Purchase Order; and (c) enabling US Foods to comply with all applicable Laws. Supplier shall not require that US Foods enter into a separate confidentiality, non-disclosure, site visit or similar agreement in connection with any such access, inspection, audit or observation by US Foods or its auditors or a governmental authority. Supplier further agrees to maintain its books and records relating to Products and/or Services provided under this Purchase Order for a period of six (6) years or such longer period as may be required by applicable Law from the date work under this Purchase Order was completed. If any such audit reveals that Supplier has overcharged US Foods, Supplier shall promptly reimburse US Foods for such overcharge, and in the event that any such overcharge equals an amount equal to or greater than five percent (5%) of the amount that should have been charged under the terms of this Purchase Order, then Supplier shall promptly reimburse US Foods for all reasonable costs and expenses incurred in the conduct of the audit. Supplier acknowledges and agrees that US Foods shall have the right, at any time during the term of this Purchase Order, including any renewal thereof, to request that Supplier complete any forms (or any successor process) and that Supplier will cooperate with such request and in the remediation of any identified weaknesses that reasonably may affect the privacy, confidentiality, security or integrity of Confidential Information (as defined in Section 5(a) below). For purposes of this engagement and the avoidance of doubt, "US Foods data" and "data" are deemed Confidential Information (as defined in Section 5 below).

#### 5. CONFIDENTIAL INFORMATION

(a) Supplier understands and acknowledges that, in the provision of Services or Products pursuant to this Purchase Order, US Foods may disclose to Supplier or Supplier may otherwise obtain information that US Foods (or any of its subsidiaries, affiliated companies, vendors or customers) considers confidential. Such information may include all information relating to the subject matter of this Purchase Order, whether furnished to or obtained by Supplier or its representatives before, on or after the date of this Purchase Order, in any form, including, but not limited to, written, verbal, visual, electronic or in any other media or manner ("Confidential Information"). For the avoidance of doubt, any and all Personal Information (as defined below in this Section 5(a)) made available to Supplier pursuant to the Services is deemed Confidential Information. Supplier shall keep Confidential Information strictly confidential as competitive-sensitive information. Supplier shall exercise the same degree of care for the Confidential Information of US Foods as it uses to protect its own confidential information, but in any event, not less than reasonable care, including, without limitation, the requirements of this Purchase Order. Supplier shall not disclose Confidential Information without the prior express written consent of US Foods to any person or entity not a party to this Purchase Order (other than as required by applicable Law) in any manner whatsoever, in whole or in part, and shall not be used by Supplier other than in connection with the purposes permitted by this Purchase Order. Confidential Information may be disclosed by Supplier only to the directors, officers, employees and agents (including subcontractors) of Supplier who have a legitimate need to know such Confidential Information for purposes of carrying out Supplier's obligations under this Purchase Order, who have agreed to comply with confidentiality provisions for the protection of the Confidential Information no less protective than the terms of this Purchase Order, and who have been informed by Supplier of the confidential nature of the Confidential Information as well as of the

confidentiality undertakings of Supplier contained herein. Supplier shall be responsible for any breach of this Section 5 caused by any such director, officer, employee or agent (including any subcontractor of Supplier). As used herein, "Personal Information" means the personally identifiable information, including name, address, e-mail address, telephone number, any other US Foods-, Supplier- or third party-issued identifier, and/or IP address in any media or format, including, without limitation, computerized or electronic records and paper-based files of an Individual. "Individual" means a natural person.

(b) Notwithstanding the restrictions set forth above, if Supplier is required by Law to disclose any Confidential Information, Supplier may make the required disclosure, provided that prior to making any such disclosure, Supplier shall provide US Foods with: (i) written notice of the proposed disclosure in order to provide US Foods with sufficient opportunity to seek a protective order or other similar order preventing or limiting the proposed disclosure; and (ii) reasonable assistance in seeking such protective order or other similar order.

(c) Upon completion or termination of this Purchase Order, and at US Foods's written request at any time, Supplier shall promptly return to US Foods or destroy (at US Foods's election) all copies of all documents or other materials, in whatever form, that contain Confidential Information and are in the possession or under the control of Supplier or any Supplier Personnel and shall certify to US Foods in writing that Supplier has done so in accordance with applicable Laws.

(d) Supplier, and for its Supplier Personnel, represents and warrants that: (i) it has adequate and appropriate controls to ensure the confidentiality, privacy, security and integrity of Confidential Information and to ensure that Confidential Information is not disclosed contrary to the provisions of this Purchase Order; (ii) it has established and/or is maintaining an appropriate administrative, technical and physical safeguards as part of an appropriate information security program as well as security measures to ensure the privacy, security, confidentiality and integrity of Confidential Information; (iii) its information security program will reasonably protect against any threats or hazards to the privacy, security, confidentiality and integrity of Confidential Information, and protect against unauthorized access to or use of Confidential Information (including, without limitation, where Confidential Information is transmitted over a network) that could result in the loss, destruction, unauthorized use, modification, or disclosure of Confidential Information, or the substantial harm or inconvenience to US Foods or any Individual. Supplier acknowledges and agrees for itself and Supplier Personnel that US Foods shall have the right to require additional reasonable protections related to the confidentiality, privacy and security of Confidential Information in connection with this Purchase Order or any renewal or amendment thereof, and Supplier shall agree to such additional reasonable protections as US Foods may reasonably require.

(e) Supplier, and on behalf of Supplier Personnel, agrees to provide to US Foods, and as otherwise required by Law, prompt written notice of all incidents that involve, or which Supplier reasonably believes may involve, the attempted or successful unauthorized access, use, disclosure, modification, destruction or loss of Confidential Information or interference with system operation in an information system or in any medium or format, including without limitation, paper (hard) copy documents that may affect Confidential Information in the custody, possession or control of Supplier or Supplier Personnel (each, a "Security Incident"). Such notice shall summarize in reasonable detail the impact on US Foods and the affected Individuals of the breach or unauthorized access, use, disclosure, modification, destruction or loss of Confidential Information and the corrective action taken or to be taken by Supplier for preventative measures to prevent any future reoccurrences of such Security Incident. Supplier, at its sole expense, shall promptly take all necessary and appropriate corrective action including, without limitation, at the written request of US Foods or any regulatory body, to provide notices to Individuals whose Confidential Information may have been affected, whether or not such notice is required by Law, and cooperate with any regulatory investigations of, and respond to and/or defend any litigation (including any class action suits or similar proceedings) relating to such Security Incident.

(f) In the event of a Security Incident, Supplier, and on behalf of Supplier Personnel, agrees to

reasonably cooperate with US Foods in connection with Supplier's, US Foods's and any other entity's investigation(s) and/or remediation of such Security Incident and shall not distribute any public announcements (including, without limitation, website postings and press releases) without US Foods's prior express written approval, which shall not be unreasonably withheld. Supplier further agrees to reimburse US Foods for all actual and reasonable costs US Foods may incur in connection with any such investigation and remediation efforts concerning a Security Incident commensurate with the nature and level of severity of the Security Incident.

(g) The obligations of Supplier (and Supplier Personnel) in this Section 5 shall be in addition to any other indemnification obligations Supplier (and Supplier Personnel) may have under the indemnification provisions of this Purchase Order. For the avoidance of doubt, these obligations may be considered indemnification obligations if necessary to make US Foods and any affected Individuals whole. Any payments under this Section 5 shall be deemed direct damages not limited by any limitation of liability or consequential, special, punitive, indirect or special damages limitations. Further, the obligations under this Section 5 shall survive the completion of the Services or provision of Products, as well as not be limited by any arbitration, limitation of actions or other similarly limiting provisions.

(h) Supplier, for itself and Supplier Personnel, agrees that it will only collect, use, process, disclose and retain Confidential Information in the U.S. and its territories, and will not transfer Confidential Information to any other country for any purpose, without the prior written authorization of US Foods and the express written consent of each Individual to whom such Confidential Information pertains. Supplier shall comply with all provisions of this Purchase Order, including, without limitation, all Laws (as defined below in Section 6 below). If this Purchase Order requires the Supplier to collect, use, disclose, hold or retain Personal Information within the European Economic Area ("EEA") or from Individuals residing in the EEA, Supplier agrees that: (i) US Foods shall, to the extent permitted by applicable Laws, be a "controller" and Supplier shall be a "processor" as such terms are defined in the EU Data Protection Directive (95/46/EC) and (ii) Supplier shall comply with any additional reasonable contractual measures required by US Foods including, without limitation, US Foods's Privacy & Information Security Addendum and Baseline Third Party Security Requirements.

## 6. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Products and Services. Supplier represents, warrants and covenants, that its performance and all Products and Services provided under this Purchase Order shall, until the earlier of twelve (12) months after first placed into service by US Foods or eighteen (18) months after delivery (or performance) by Supplier (or for such longer warranty period as provided by Supplier): (i) be free from defects in design, workmanship and materials; (ii) be of the kind, quantity and quality described in, and conform with, the requirements specified in this Purchase Order; (iii) be fit for the purpose intended; (iv) perform in the manner specified; (v) in the case of Services, reflect the highest standards of professional knowledge and judgment; (vi) designed and constructed to be safe and without risk to human health; (vii) be free of any claim of misappropriation or infringement by a third party; (viii) if the Products are software, be the most current releases generally available to third parties at the time of delivery; and (ix) comply with all other requirements of this Purchase Order. Supplier represents, warrants and covenants, that its performance and all Products and Services provided under this Purchase Order shall, for a perpetual duration (A) be free and clear of all liens, claims and encumbrances by the date delivered to US Foods; (B) If the Product is software, it shall not contain any (1) "back door," "time bomb," "drop dead" device or other software routine designed to disable the software automatically with the passage of time or under the positive control of any person or (2) virus, "Trojan horse," "worm" or other software routines or hardware components designed to permit unauthorized access, to disable, erase or otherwise harm the software, hardware or data, or to perform any other similar actions; (C) comply with all applicable global, federal, country, state, local, foreign and other laws, rules and regulations, ordinances, decrees, orders, codes and requirements (including, but not limited to, any requirements for consents, permits, certificates, approvals and inspections), as the same are promulgated, supplemented and/or amended from time to time ("Laws")



that apply to or govern the Services or Products to be provided by Supplier or any of the employees, contractors, subcontractors or agents of Supplier and its subcontractors (collectively, "Supplier Personnel") pursuant to this Purchase Order Terms and Conditions, including, but not limited to, the Fair Labor Standards Act of 1938, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and all applicable federal state and local laws relating to equal employment opportunity and non-discrimination; the Toxic Substance Control Act (the "TSC Act"); the Food, Drug and Cosmetic Act (the "FDC Act"); the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Occupational Safety and Health Act; and the Immigration Reform and Control Act of 1986, data protection and privacy Laws, each as supplemented and/or amended from time to time; and (D) comply with all US Foods standard operating procedures, policies, control standards and guidelines applicable to the provision of Products or Services, each as supplemented and/or amended from time to time, including, but not limited to US Foods's background check requirements and the "Gifts and Entertainment Policy". All Supplier Personnel shall be properly educated, trained and qualified to provide the applicable Products and/or Services and shall be properly instructed on how to use and protect Confidential Information to ensure compliance with Supplier's obligations under Section 5.

Supplier shall, without additional cost to US Foods, within thirty (30) days of receipt of written notification of any non-conformance with the warranties set forth above in this Section 6(a), as directed by US Foods, correct any such non-conformance by promptly: (i) repairing, replacing or re-performing the non-conforming Products or Services; or (ii) refunding to US Foods all fees paid by US Foods hereunder for the non-conforming Products or Services and those Products or Services that are dependent on such non-conforming Products or Services. The foregoing shall not be construed to limit or exclude any other rights or remedies of US Foods at law or in equity. The warranty with respect to any such corrected Products or Services shall be subject to the same terms as the warranty provided for in this Section 6(a).

Without limiting the generality of the preceding provisions of this Section 6(a), Supplier represents, warrants, and covenants that all Product: (i) shall be adequately contained, packaged, marked, labeled and registered in compliance with, and shall conform to, the requirements of all applicable Laws; (ii) meet or exceed the safety standards established and promulgated under the occupational Safety and Health Act of 1970, and the regulation issued thereunder (each as supplemented and/or amended from time to time); and (iii) are, as of the date of delivery, not adulterated or misbranded within the meaning of the FDC Act and are not articles which may not, under the provisions of Section 404, 505 or 512 of the FDC Act, be introduced into interstate commerce, and are also not adulterated or misbranded within the meaning of the food drug or cosmetic laws of any state or local municipality.

Without limiting the generality of the preceding provisions of this Section 6(a), Supplier represents, warrants, and covenants that every chemical substance and/or mixture as defined under the TSC Act, contained in the Products or utilized in their manufacture, has been properly reported to the United States Environmental Protection Agency in accordance with the provisions of the TSC Act and the regulations issued thereunder (each as supplemented and/or amended from time to time). Supplier further represents, warrants, and covenants that all color additives covered under this Purchase Order shall be manufactured by Supplier and (where color additive regulations require certification) are from batches certified in accordance with the applicable regulation promulgated under the FDC Act or TSC Act, as applicable.

(b) Supplier Personnel. US Foods shall have the right to review and approve the qualifications of all Supplier Personnel assigned to provide the Products and/or the Services under this Purchase Order. US Foods shall also have the right to designate at any time that any such Supplier Personnel be removed and replaced with respect to the performance of any activities associated with this Purchase Order.

- i. **OFFER OF HEALTH COVERAGE.** If applicable, Supplier shall give Supplier Personnel an opportunity to enroll annually in health coverage for themselves and their dependents. Supplier

agrees that such coverage will be affordable and shall provide minimum value within the meaning of Internal Revenue Code §36B(c)(2)(C) and accompanying regulations and other applicable guidance. If any of the Supplier Personnel are reclassified as common law employees of US Foods, the Parties agree that the requirement of Supplier to offer health coverage under this Agreement is intended to be an offer on behalf of US Foods in accordance with Treas. Reg. §54.4980H-4(b)(2) and that the rate US Foods pays Supplier for any of the Supplier Personnel who are enrolled in health coverage under Supplier's health plan is higher than the fee US Foods would pay to Supplier for the same employee if the employee did not enroll in health coverage under such plan. Upon request, Supplier shall certify to US Foods its compliance with the terms of this section. Supplier shall satisfy all reporting requirements under Internal Revenue Code §§6055 and 6056 with respect to Supplier Personnel.

ii. **PROHIBITION ON DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.**

- a. **Unless exempt, Supplier shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identification or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identification, national origin, protected veteran status or disability.** If applicable, the contractor and subcontractor shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans' employment reports and 29 CFR Part 471, Appendix A to Subpart A regarding posting a notice of employee rights.
- b. Unless exempt, Supplier is required to assist US Foods in complying with its affirmative action obligations by maintaining an equal employment, non-discrimination policy and practices that meet applicable federal and state legal requirements. In sourcing candidates for US Foods, Supplier will comply with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Section 4212 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, and implementing regulations at 41 CFR Part 60, including the following: (1) invite job seekers to voluntarily identify their race/ethnicity, gender, veteran and disability status; (2) maintain applicant flow data and related documents (including applications, resumes, and database searches) for all candidates Supplier considers for a position with US Foods which Supplier viewed as having the basic qualifications for that position, and provide them to US Foods upon request; (3) engage in good faith efforts (for example, by working with local outreach partners) to recruit women, minorities, veterans and disabled individuals; (4) post openings with the local state employment service; and (5) provide reasonable accommodations, upon request, to disabled applicants so they have equal access to employment opportunities. Supplier also agrees to cooperate with US Foods in any governmental audits or inquires that relate to the Supplier's activities on behalf of US Foods.
- c. **Certification of Non-Segregated Facilities.** Supplier certifies that it is in compliance with 41 C.F.R. § 60-1.8 and the Federal Acquisition Regulation ("FAR") 52.222-21 (codified at 48 C.F.R. § 52.222-21), as pertains to non-segregated facilities. As used in the certification, the term "**segregated facilities**" means any waiting rooms, work areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit,

local custom or otherwise. Supplier further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of FAR 52.222-26 Equal Opportunity or the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended; that it will retain such certifications in its files; and that it will notify proposed subcontractors and suppliers that it is subject to the provisions of the certification requirements.

- d. **Notification of Employee Rights under the National Labor Relations Act.** During the term of this Agreement, Supplier shall comply with FAR 52.222-40 (Dec 2010) and shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f). In the event that Supplier does not comply with the requirements set forth in FAR 52.222-40, this Agreement may be terminated or suspended in whole or in part, and Supplier may be suspended or debarred in accordance with 29 CFR 471.14 and subpart [9.4](#). Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.
  - e. To the extent applicable, Supplier shall include the provisions of this section in every subcontract or purchase order so that such provisions shall be binding upon each subcontractor or vendor performing services or providing materials relating to this Agreement and the Services provided pursuant to the terms hereof.
- iii. **COMBATING TRAFFICKING IN PERSONS.** Supplier shall comply with Federal Acquisition Regulation (“FAR”) 52.222-50 (Mar 2015) and shall notify Supplier Personnel and its agents of the United States Government's policy prohibiting trafficking in persons as defined by FAR 52.222-50(a), including forced labor, involuntary servitude, sex trafficking, or severe forms of trafficking in persons, and the actions that will be taken against Supplier Personnel or agents for violations of this policy. Such actions for Supplier Personnel may include, but are not limited to, removal from providing support from US Foods, reduction in benefits, or termination of employment. Supplier shall notify US Foods immediately of any credible information it receives from any source that alleges a Supplier employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates this clause and any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause. Supplier Personnel shall provide timely and complete responses to Government auditors' and investigators' requests for documents and cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Supplier's failure to comply with the requirements of this clause may result in requiring Supplier to remove a Supplier employee or employees, requiring Supplier to terminate a subcontractor, or termination of this Agreement for cause. Supplier shall include the substance of FAR 52.222-50 and this clause, including this requirement to flow down the clause to subcontractors and agents, in all subcontracts and in all contracts with agents.

(c) Supplier shall not use, and shall not allow to be used, any (a) cassiterite, columbite-tantalite, gold, wolframite, or the derivatives tantalum, tin, or tungsten (“Initial Conflict Minerals”) that originated in the Democratic Republic of Congo (“DRC”) or an adjoining country, or (b) any other mineral or its derivatives determined by the Secretary of State to be financing conflict pursuant to Section 13p of the Securities and Exchange Act of 1934 (“Additional Conflict Minerals”, and together with the Initial Conflict Minerals, “Conflict Minerals”), in the production of the Product. Notwithstanding the foregoing, if Supplier uses, or determines that it has used, a Conflict Mineral in the production of the Product, Supplier shall immediately notify US Foods, which notice shall contain a written description of the use of the Conflict Mineral, including, without limitation, whether the Conflict Mineral appears in any amount in the Product (including trace amounts) and a valid and verifiable certificate of origin of the Conflict Mineral used. Supplier must be able to demonstrate that it undertook a reasonable country of origin inquiry and due diligence process in connection with its preparation and delivery of the certificate of origin.

(d) Restricted Party. Supplier represents, warrants, and covenants that Supplier is not designated as a Restricted Party (as defined below). Supplier has not and will not use, in any capacity in connection with the delivery of the Products or the Services performed under this Purchase Order, any person or entity who or that has been designated as a Restricted Party. Supplier will immediately notify US Foods in the event that Supplier or any Supplier Personnel becomes designated as a Restricted Party during the term of this Purchase Order. Notwithstanding any cure periods set forth herein, Supplier acknowledges that designation as a Restricted Party shall be grounds for immediate termination of this Purchase Order by US Foods for cause with no cure period. “Restricted Party” means any individual or entity placed on lists maintained by an applicable governmental authority, including those established under the FDC Act or the U.S. Foreign Assets Control Regulations.

(e) US Foods Supplier Code of Conduct. At all times, Supplier must be in compliance with the terms and conditions of the US Foods Supplier Code of Conduct as provided to Supplier and updated by US Foods from time to time in its sole discretion.

(f) U.S. Customs – Trade Partnership Against Terrorism (“C-TPAT”).

(i) Supplier has reviewed its supply chain security procedures and these procedures and their implementation are, and shall remain during the term of this Purchase Order, in accordance with the importer security criteria set forth by the Customs-Trade Partnership Against Terrorism (“C-TPAT”) program of the U.S. Bureau of Customs and Border Protection. Supplier represents and warrants that it has developed and implemented, or shall develop and implement within sixty (60) days of the date of this Purchase Order, procedures for periodically reviewing and, if necessary, improving its supply chain security procedures to assure compliance with C-TPAT security criteria.

(ii) Supplier acknowledges that US Foods is a certified member of C-TPAT. Importers that have joined C-TPAT are expected to have substantially fewer of their imports inspected and, hence, fewer supply chain delays (the “C-TPAT Benefits”). As a C-TPAT member, US Foods is required to make periodic assessment of its international supply chain based upon C-TPAT security criteria. Supplier agrees to conduct an annual security audit at each of its facilities and to take all necessary corrective actions to ensure the continued participation of US Foods in C-TPAT. Supplier agrees to share with US Foods the results of such annual audits and agrees to prepare and submit to US Foods a report on the corrective actions taken in response thereto. In addition, US Foods may audit Supplier’s records and facilities for the purpose of verifying that Supplier’s procedures are in accordance with the C-TPAT security criteria, and Supplier shall provide

US Foods with access to Supplier's records and facilities reasonably necessary for the purpose of conducting such audit. Supplier agrees to notify US Foods of any event that has resulted in or threatens the loss of its C-TPAT Benefits (if it is a member of the C-TPAT program) or alternatively jeopardizes US Foods's retention of its own C-TPAT Benefits. In an effort to secure each part of the supply chain, if Supplier is not already a member, Supplier agrees to work in good faith to become a member of the C-TPAT program, if Supplier is organized or incorporated in the United States, Mexico or Canada, or the equivalent supply chain security program criteria administered by the customs administration in Supplier's home country if Supplier is not organized or incorporated in the United States, Mexico or Canada.

(g) Conflicts. The execution, delivery and performance of this Purchase Order by Supplier does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, and does not violate any law or regulation of any court, governmental body or administrative or other agency having authority over Supplier. Supplier is not currently a party to, and during the term of this Purchase Order will not enter into, any agreements, oral or written, that are inconsistent with its obligations under this Purchase Order.

(h) Authority. Supplier is validly existing and in good standing under the laws of the jurisdiction of its organization and has the power and authority to enter into this Purchase Order. This Purchase Order has been duly executed and delivered by Supplier and constitutes the valid and binding obligation of Supplier, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Purchase Order have been duly authorized by all necessary action on the part of Supplier, its officers and directors.

(i) No Actions Pending. There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Supplier's knowledge, threatened against Supplier, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Supplier of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the enforceability of this Purchase Order, or any other agreement or instrument entered into by Supplier in connection with the transactions contemplated hereby. In the event Supplier becomes aware of such action, suit or proceeding, Supplier shall immediately notify US Foods.

(j) Cooperation/Coordination with Third Party Vendors. Supplier acknowledges that US Foods may, during the course of this Purchase Order, work with one or more other third party consultants and service providers from time to time in connection with this Purchase Order. Supplier shall reasonably cooperate with all such third parties as US Foods may request from time to time.

## 7. INDEMNIFICATION

(a) To the fullest extent permitted by applicable Law, Supplier hereby agrees to defend, indemnify, and hold harmless US Foods, its affiliates (and their respective directors, officers, employees, agents, successors and assigns) (each, an "Indemnified Party") from and against any and all claims, liabilities of every kind, including liability based on contributory, vicarious, or any other doctrine of secondary liability, or character, (collectively, "Losses") arising out of or relating to any and all claims, liabilities, liens, demands, obligations, actions, proceedings, suits, causes of action of every kind (regardless of whether or not such Losses are caused in part by a party indemnified hereunder) arising out of or related to: demands, damages, judgments, awards, settlements, expenses, or losses, including costs of litigation and reasonable attorneys' fees (collectively "Claims"), arising, directly or indirectly, from: (i) the acts or omissions of Supplier or Supplier Personnel in connection with the provision of the Services or Products under this Purchase Order; (ii) any individual's (including any Supplier Personnel's) prospective, then-current or former employment by Supplier, including (A) any claim arising under occupational health and safety,

worker's compensation, ERISA or other applicable Law, (B) any claim based on or arising out of any theory that US Foods is an employer or joint employer of any Supplier Personnel, (C) any claim arising out of any termination or separation from Supplier; (D) any claim arising out of Supplier's failure to pay any of its Personnel; and (E) claims and/or penalties arising under the Affordable Care Act; (iii) a breach by Supplier of the representations, warranties, covenants, and any other provisions set forth in this Purchase Order Terms and Conditions, including, but not limited to, any confidentiality, privacy and/or security obligation stated in Section 5 above and the obligations to comply with Laws; (iv) any claim charging that Supplier's provision or US Foods' purchase or use of the Products or Services provided under this Purchase Order constitutes misappropriation or infringement of any Intellectual Property Rights (as defined in Section 11 below) or breach of a confidential relationship (v) injury to or death of any person or damage to any property resulting from and/or caused by Supplier or its Personnel in connection with the Supplier's performance or non-performances of Supplier's obligations under this Purchase Order and (vi) Supplier's failure to require any consultant or subcontractor to be insured as set forth under the terms of this Purchase Order. If the Products or Services, or the use of such Products or Services, are held to constitute an infringement or misappropriation and their sale or use is enjoined, Supplier shall, at Supplier's expense and option, either procure for US Foods the right to continue to use such Products or Services, or replace the same with equivalent non-infringing Products or Services, or modify the same so they become equivalent non-infringing Products or Services; except that if the foregoing is not commercially practicable or upon request by US Foods, Supplier shall refund to US Foods all fees paid by US Foods under this Purchase Order for such Products or Services and those Products or Services that are dependent thereon. Supplier shall use counsel reasonably acceptable to US Foods. Supplier shall accept tender of the defense of any such Claims in writing within seven (7) days of receipt of notice of such Claims. Supplier shall not settle or admit liability on behalf of any Indemnified Party without the express prior written consent of the Indemnified Party. This Section 7 shall not be construed to limit or exclude any other claims or remedies at law or in equity that an Indemnified Party may assert.

## 8. INSURANCE

Supplier shall, at its own expense, maintain and carry insurance in full force and effect with a company or companies with an A.M. Best Rating of at least A-, which includes: (a) Commercial General Liability Insurance General-Aggregate: \$5,000,000; Each Occurrence: \$5,000,000; and Fire Damage (any one fire): \$1,000,000; (b) Workers' Compensation Insurance with Statutory Limits and Employer's Liability with limits equal to each Accident: \$1,000,000; (c) Comprehensive Automobile Liability Insurance with limits equal to: \$1,000,000 Combined Single Limit, except for Suppliers providing fuel, in which case \$3,000,000 Combined Single Limit. Such minimums may be achieved through a combination of per occurrence and umbrella or excess coverage. Upon US Foods' request, Supplier shall provide to US Foods Certificates of Insurance. The Certificate of Insurance shall name US Foods as "an additional insured" for each of the policies listed above, as applicable. All of the policies on which US Foods is shown as an additional insured shall contain a waiver of subrogation in favor of US Foods. The following additional insured wording shall be required, "Certificate holder is included as an additional insured on a primary and non-contributory basis. Waiver of subrogation is granted in favor of the certificate holder." Supplier shall promptly notify USF in the event any of the described policies listed above be cancelled before the expiration date, but failure to do so shall impose no obligation or liability of any kind upon the insurer. Additionally, any approval by US Foods of any of Supplier's insurance policies shall not relieve Supplier of any obligation contained in this Purchase Order, including liability for claims in excess of described limits.

## 9. LIMITATION OF LIABILITIES

NOTWITHSTANDING ANYTHING SET FORTH HEREIN AND TO THE FULLEST EXTENT OF THE LAW, IN NO EVENT SHALL US FOODS BE LIABLE TO SUPPLIER OR TO ANY OTHER PARTY FOR ANY LOST PROFITS, OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY,

WHETHER NEGLIGENCE, BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF THE PARTY KNEW, SHOULD HAVE KNOWN OR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## TERM AND TERMINATION

10. (a) Term. This Purchase Order shall commence upon Supplier's acceptance of this Purchase Order and shall continue through US Foods' acceptance of such Services or Products, as may be further specified in this Purchase Order.

(b) Termination. In addition to US Foods's termination rights set forth elsewhere herein, US Foods may terminate this Purchase Order, in whole or in part, in its sole discretion: (i) upon fifteen (15) days prior written notice to Supplier for any reason; (ii) immediately upon written notice to Supplier if Supplier breaches this Purchase Order; (iii) if reasonable grounds for insecurity arise with respect to Supplier's performance and Supplier fails to furnish adequate assurances within five (5) days after written demand by US Foods for such assurance; (iv) immediately upon written notice to Supplier if Supplier becomes insolvent or otherwise makes an assignment for the benefit of creditors, commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings; or (v) Supplier breaches any of the representations, warranties or covenants contained herein. During any notice period, Supplier shall cease to provide the cancelled Services or Products, as the case may be, to US Foods as soon as commercially practicable after receiving such notice.

(c) Effect of Termination/Expiration. Upon termination or expiration of this Purchase Order: (i) US Foods shall be entitled to the ownership, possession, use and license of any and all work in process under this Purchase Order to which it is entitled pursuant to Section 11 below; (ii) Supplier shall invoice US Foods for all outstanding fees and expenses incurred for Services satisfactorily performed and/or Products delivered under this Purchase Order through and including the date of any such termination or expiration; and (iii) Supplier shall comply with its obligations under Section 5(c) above.

(d) Survival. The provisions of Sections 1(b) and (c), 4 -7, 9, 10(c) and (d), 11 - 12 and any other provisions which are expressly or by implication intended to continue in force after such termination or expiration shall survive the termination of this Purchase Order.

## 11. INTELLECTUAL PROPERTY

For all work products and deliverables created under this Purchase Order through the performance of the Services, Supplier and Supplier Personnel hereby assign and transfer to US Foods all rights to possession of, and all right, title, and interest, including all patent, copyright, trademark, trade secret and other proprietary and intellectual property rights ("Intellectual Property Rights") in and to such work products and deliverables created under this Purchase Order, in whatever form or medium captured, and in and to all physical and electronic materials, papers, and documents (including drawings), hereinafter referred to as "Works," and copies, abstracts, and summaries thereof, which are developed or conceived or which may come into their possession in any manner by reason of the provision of Services under this Purchase Order. Supplier shall promptly disclose to US Foods any Works known to Supplier or Supplier Personnel, and all such Works shall be deemed to be "works made for hire" exclusively for US Foods, with US Foods having sole ownership of such Works and the sole right to obtain and to hold in its own name any Intellectual Property Rights therein and thereto. Supplier hereby agrees to give US Foods or any person designated by

US Foods at US Foods's expense, all reasonable assistance required to perfect the rights hereinabove defined. Supplier represents, warrants and covenants that it has caused or will cause all Supplier Personnel to enter into an enforceable agreement with Supplier prior to their performance of any Services, which agreement includes appropriate confidentiality, assignment of work product and invention provisions to effectuate the provisions of this Purchase Order. Notwithstanding the foregoing provisions, US Foods's ownership rights do not apply or extend to any of the following (collectively, the "Supplier Property"): (i) any methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience or other materials or property owned or licensed by Supplier before the provision of the Services under this Purchase Order; (ii) any improvements or other modifications to any of the foregoing that Supplier creates during the performance of the Services under this Purchase Order without the use of any of US Foods's Confidential Information or Intellectual Property Rights; or (iii) any of the Intellectual Property Rights in or to any of the items described in the preceding clauses (i) and (ii). All right, title, and interest in and to the Supplier Property is and shall remain in Supplier, and Supplier shall not be restricted in any way with respect to the Supplier Property. However, to the contrary, to the extent that any Supplier Property is incorporated into or embodied in any of the Works, or covers or controls any of the Works, or is necessary in order to fully and freely use any of the Works, Supplier hereby grants to US Foods and its affiliates a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, with the right to grant sublicenses, to (A) use such Supplier Property solely as part of or in connection with such Works or any derivative work based upon such Works, and (B) to modify such Supplier Property, solely to the extent such modification is necessary in connection with the creation of a derivative work based upon such Works.

## 12. MISCELLANEOUS

(a) Use of US Foods Trademark/Name; Publicity. Supplier shall not issue any press release or other publicity materials, or make any presentation with respect to the existence of this Purchase Order or the terms and conditions hereof without the prior express written consent of US Foods in each instance. Supplier shall not publicize or use any name, trade name, service marks, trademarks, trade dress or logos of US Foods (or any of its affiliates) nor identify US Foods (or any of its affiliates) as a customer without US Foods's prior written consent in each instance. This restriction shall not, however, apply to the extent that any such disclosures are required by applicable Laws, including as may be required in connection with any filings required to be made with the United States Securities and Exchange Commission or by the disclosure policies of a major stock exchange.

(b) Governing Law; Venue. This Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to the conflict of laws provisions thereof. The federal and/or state courts of Delaware shall have exclusive personal and subject matter jurisdiction over, and the parties each hereby submit to the venue of such courts with respect to, any dispute arising out of or relating to this Agreement, and all objections to such jurisdiction and venue are hereby waived. Vendor consents to service of process permitted under Delaware law or by certified mail, return receipt requested. **THE PARTIES EXPRESSLY AGREE THAT THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980) IS SPECIFICALLY EXCLUDED AND SHALL NOT APPLY TO THIS PURCHASE ORDER.**

Each Party hereby waives (i) any objection which it may have at any time to the venue of the proceedings in any such court, (ii) any claim that such proceedings have been brought in an inconvenient forum and (iii) the right to object, with respect to such proceedings, that such court does not have any jurisdiction over such Party.

(c) Relationship of the Parties. US Foods engages Supplier only for the purposes and to the extent set forth in this Purchase Order and, accordingly, Supplier shall not be considered a partner, co-venturer, agent, employee, or representative of US Foods, but shall remain in all respects an independent contractor, including for purposes of the Occupational Safety and Health Act or state equivalent. Neither US Foods nor Supplier shall have any right or authority to make or undertake any promise, warranty or representation, to execute any contract, or otherwise to assume any obligation or responsibility in the name



of or on behalf of the other party. Neither US Foods nor Supplier shall be deemed a joint employer of the other's employees, each party being responsible for any and all claims by its employees. Neither Party's employees shall be deemed "leased" employees of the other for any purpose.

(d) Assignment; Subcontracting. This Purchase Order or any right or obligation arising therefrom shall not be assigned or transferred by Supplier in the absence of US Foods's prior written consent thereto and any purported assignment or transfer absent such consent shall be automatically deemed null and void. Supplier shall not delegate or subcontract any of its obligations or responsibilities under this Purchase Order to any third party (including to an affiliate of Supplier) without US Foods's prior written permission. No delegation or subcontracting by Supplier hereunder shall relieve Supplier of any of its obligations or responsibilities under this Purchase Order and Supplier shall remain responsible for obligations, services and functions performed by its subcontractors to the same extent as if they were performed by Supplier.

(e) Divestiture. Notwithstanding anything to the contrary contained in this Purchase Order, to the extent related to or arising in connection with a divestiture (whether by sale, spin-off, or similar transaction) by US Foods of all or any portion of a US Foods business or business unit ("a Divestiture"), US Foods may, without prior written notice to or consent of Supplier, without any penalty, and at no additional cost to US Foods or to any affiliate of US Foods or to the company or the group of companies resulting from such Divestiture (collectively, such companies, the "Resulting Companies"): (1) assign its rights and obligations under this Purchase Order, in whole or in part to one or more of the Resulting Companies, or (2) split and assign, in whole or in part, its rights and obligations under this Purchase Order to one or more of the Resulting Companies so as to retain the benefits of this Purchase Order for both US Foods and the applicable Resulting Compan(y)/(ies) following such Divestiture.

From and after any partial assignment or split (i) the rights and obligations of US Foods hereunder shall be divided between US Foods and the Resulting Compan(y)/(ies) to whom such rights and obligations are transferred as specified by US Foods, such that all such rights and obligations related to the business of the applicable Resulting Compan(y)/(ies) shall be enforceable only by and against the applicable Resulting Compan(y)/(ies), and all other such rights and obligations shall be enforceable only by and against US Foods and (ii) to the extent this Purchase Order contains any volume-based pricing or discounts in favor of US Foods or minimum purchase thresholds, any purchases by US Foods and the applicable Resulting Compan(y)/(ies) hereunder shall be aggregated for purposes of determining the applicable pricing and discounts and whether any minimum threshold has been met. Supplier will work cooperatively with US Foods and the applicable Resulting Compan(y)/(ies) to ensure a smooth and orderly transition, including, to the extent requested by US Foods, entering into separate agreements with US Foods and the applicable Resulting Compan(y)/(ies) on substantially the same terms and conditions (as adjusted to take into account the nature of the separate contracts while maintaining the economic, business and other purposes of the Purchase Order).

No term, condition or provision of this Purchase Order, whether express or implied, shall be construed to limit US Foods's use of the Services for the benefit of Resulting Compan(y)/(ies) for up to two (2) years after a Divestiture, and Supplier shall not charge US Foods any additional fee of any kind whatsoever for such usage.

(f) Force Majeure. No Party shall be liable for any failure to perform or any delays in performance, and no Party shall be deemed to be in breach or default of its obligations set forth in this Purchase Order, if, to the extent and for so long as, such failure or delay is due to any causes that are beyond its reasonable control and not to its acts or omissions, including, without limitation, such causes as acts of God, natural disasters, flood, severe storm, earthquake, civil disturbance, lockout, riot, order of any court or administrative body, embargo, acts of government, war (whether or not declared), acts of terrorism, or other similar causes ("Force Majeure Event"). For clarity, raw material price increases, unavailability of raw materials, and labor disputes shall not be deemed a Force Majeure Event. In the event of a Force Majeure Event, the Party prevented from or delayed in performing shall promptly give notice to the other

Party and shall use commercially reasonable efforts to avoid or minimize the delay. The Party affected by the other Party's delay may elect to: (a) suspend performance and extend the time for performance for the duration of the Force Majeure Event, or (b) cancel all or any part of the unperformed part of this Purchase Order.

(g) Severability. If and solely to the extent that any court or tribunal of competent jurisdiction holds any provision of this Purchase Order to be unenforceable in a final non-appealable order, such unenforceable provision shall be stricken and the remainder of this Purchase Order shall not be affected thereby. In such event, the parties shall in good faith attempt to replace any unenforceable provision of this Purchase Order with a provision that is enforceable and that comes as close as possible to expressing the intention of the original provision.

(h) Waiver; Partial Invalidity. The failure of US Foods to insist in any instance upon strict performance by Supplier of any provision of this Purchase Order shall not be construed as a continuing waiver of such item, or waiver of any other provision of this Purchase Order or any corresponding Agreement. If any provision of this Purchase Order shall be held illegal or unenforceable by any governmental authority having jurisdiction over this Purchase Order, the validity of the remaining portions shall not be affected thereby.

(i) Headings. Headings are included herein for convenience of reference only, and shall not constitute a part of this Purchase Order or change the meaning of this Purchase Order.