

EVERYTHING FOOD VENDOR AGREEMENT

The Everything Food, Inc. ("**Everything Food**", or "us", "we", or "our") internal vendor website portal ("**Vendor Portal**" or "website"), is where you can obtain information to assist with managing your relationship with Everything Food and manage various back end features in order to make sales of your food products using the Everything Food proprietary platform ("**Everything Food Platform**").

Any person or entity ("**Vendor**", "you" or "your") who wants to supply Products (as defined in Section 1) to Everything Food or access or use the Vendor Portal must accept this Everything Food Vendor Agreement ("**Agreement**") without change. BY REGISTERING FOR OR OTHERWISE USING THIS WEBSITE, YOU (1) ON BEHALF OF YOURSELF AND THE ENTITY THAT YOU REPRESENT, AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE; AND (2) REPRESENT AND WARRANT THAT YOU ARE EXPRESSLY AUTHORIZED TO BIND VENDOR TO THIS AGREEMENT.

1.(a) Product Pricing and Purchase Orders: This Agreement governs our purchase of Products from you. "Products" means all food goods provided to Everything Food, including their packaging unless expressly covered by a separate written agreement between you and Everything Food. Additional terms may be specified in a Purchase Order ("**PO**") but are not binding unless agreed to in writing by both parties. Documents that we sign acknowledging receipt of Products do not constitute acceptance of the Products. We may modify or cancel POs without penalty before you ship Products to the consumer. The PO may specify Product prices and payment terms and may include discounts or rebates.

1.(b) Purchase Terms: Purchasing terms, coop, allowances, discounts, rebates or other funding, to the extent not reflected in the PO, will be set forth on the Vendor Portal and are the requirement of you to maintain such pricing terms on the Vendor Portal.

1.(c) MSRP and MAP: Vendor must provide an MSRP (manufacturer's suggested retail price) to us using the Vendor Portal. You must also provide a MAP (minimum advertised price) for each Product to be sold on the Vendor Portal.

1.(c)(1) Vendor agrees not to sell any Products that are offered for sale and listed on the Vendor Portal for less than the MAP on any external website or through any third-party resellers either directly or indirectly while such Products are listed on the Vendor Portal.

1.(c)(2) Everything Food may suggest raising the Retail Prices and the corresponding Product cost to Everything Food and Vendor agrees to simultaneously raise their Retail Prices on any non-Everything Food external websites owned or directly control by vendor.

1.(c)(3) Everything Food shall have sole discretion and control over the retail price for each Product sold by Vendor that is listed on the Vendor Portal.

1.(c)(4) For promotional "Sale Pricing" vendor may lower the price of a given Product by lowering Everything Food's product cost proportionally to the Retail Price of such Products during the promotional period until expiration of the promotion period. Such promotions shall be allowed at Everything Food's sole discretion and shall only be effective upon the prior express written consent of Everything Food.

1.(d) **Everything Food 'Sponsored' Products:** Everything Food may invite certain vendors to ship Products bearing Everything Food's proprietary label or certification program identification materials. In the event Everything Food invites you to utilize such Everything Food identification on your Products for sale to Everything Food customers, you shall comply with the Everything Food Identification Products Exhibit attached hereto.

1.(e) **Referral Program:** Everything Food has established a commission based sales channel incentive referral program ("**Referral Program**") that utilizes Everything Food's participating chefs and dieticians and other professionals (individually a "**Referral Source**"). The Referral Program was created to incentivize each Referral Source through a commission payable by Vendor to the Referral Source ("**Commission**"), for any Products that are sold by Vendor as a result of such Referral Source's recommendation of a Everything Food Products based on the nutritional elements as identified by Everything Food. If Everything Food determines that a Product qualifies for a Commission and is thereby subject to the terms of the Referral Program then Everything Food shall indicate on the PO that the order qualifies for a Commission ("**Referral Program PO**"). If Vendor accepts the terms of the Referral Program PO by fulfilling the same, then Vendor shall comply with the then current terms (including the paying of any and all Commission) of the Referral Program Terms and Conditions [Click] described on the Vendor Portal.

2.(a) Product Images/Information: On an ongoing basis, you will provide us, free of charge, all accurate current Product information, including electronic images and any Product information or warnings required by law to be disclosed in any sale or advertisement of the Product ("**Product Information**"). Product Information also includes any Product information collected by us from your website, or otherwise made available to us by you (or by a third party at your direction). You grant us a non-exclusive, worldwide, perpetual, irrevocable and royalty-free license to: (a) use, copy, display, perform, and distribute the Product Information on or in connection with any online or offline point of presence, mobile application, service or feature; (b) excerpt, reformat, adapt or otherwise create derivative works of the Product Information; (c) use all trademarks or trade names included in the Product Information; and (d) sublicense any of the foregoing rights to third parties in connection with our programs or services (for example, to advertise your Products). You will promptly provide all information regarding safety, compliance, industry

standards or testing related to your Products ("**Product Safety Information**") that we reasonably request.

2.(b) **Additional Nutrients.** You understand and agree that Everything Food may supplement the Product Information as such will be displayed on the Everything Food Platform with additional nutrient information ("**Additional Nutrient Info**") based on the FDA Nutrient Database or other relevant third-party nutrient database.

2.(c) **Vendor Profile.** Food U maintains a profile for food vendors worldwide. These profiles are updated by Everything Food with Additional Nutrient Info described for those vendors' products. Together with the vendor's name, corporate information, brands and products associated with such vendor, this is considered the "Vendor Profile" as maintained by Everything Food. You shall have the option of 'taking over' the Vendor Profile that Everything Food has established for your company by notifying Everything Food on the Vendor Portal. Upon Your taking over of the Vendor Profile you are required to ensure the information is accurate, update any product/brand images, correct any inaccuracies in nutritional elements including Additional Nutrient Info and otherwise maintain, monitor and update your Vendor Profile during the term of this Agreement. You agree to give at least thirty (30) days' notice to Everything Food if you decide that you no longer comply with this Section and the requirements regarding maintenance of your Vendor Profile.

2.(d) **Product Inventory/Quality:** Vendor understands that Everything Food will maintain a vendor "Scorecard" that will monitor various interactions between Vendor and the Vendor Platform. In order to keep a positive Scorecard, Vendor is expected to satisfy the following requirements in order to be promoted and recommended by Everything Food as a reputable Vendor:

- On-time shipment;
- Customer return rate;
- Product inventory accuracy (Stock-outs)
- Customer ratings/feedback

3. Representations, Warranties, and Covenants: You represent, warrant and covenant that: (a) the Products are genuine and free from defects; (b) all materials and other items incorporated into the Products are new (not refurbished or reconditioned); (c) the Product Information, Product Safety Information, packaging, and labeling is true, accurate and complete, and the Products and our exercise of our license rights in this Agreement will not violate any third party's rights; (d) you will comply with all applicable laws and rules relating to the Products (including obtaining and maintaining any permits or licenses required to manufacture, distribute, sell, export, import or otherwise deal in any Product), and the Products, Product Information, packaging, labeling, export, and import documentation (if applicable) will comply with all applicable laws and rules; (e) the Products may be lawfully marketed, stored, sold, distributed, and disposed of without restriction (e.g., no required disclosures, licenses, or registrations) other than any specific restrictions or prohibitions you disclose and we consent to in writing in advance of shipment to Everything Food customers; (f) no

Product is, or contains ingredients that are, regulated as a controlled drug or substance, or is listed as a regulated chemical; (g) no Products will be provided to us that are regulated as a hazardous or dangerous product or material, except as expressly permitted under applicable Program Policies or you disclose to us and we consent to in writing in advance of shipment to Everything Food customers; and (h) the Products were produced, manufactured, assembled, and packaged in compliance with all applicable labor, wage, and hour laws and rules (including the U.S. Fair Labor Standards Act, if applicable), and no Products were produced, manufactured, assembled, or packaged by forced, prison or child labor (defined as age 15 or the minimum working age within the applicable jurisdiction, whichever is older); (i) the country of origin of the Products is not subject to U.S. or other applicable government sanctions that prohibit the importation of products from such country at the time of import or at the time you deliver the Products to us; (j) you and your financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party.

You warrant and represent that each Product offered for sale on the Vendor Portal meets all requirements of the U.S. Federal Food, Drug and Cosmetic Act, and you provide to us the following continuing guaranty:

All food comprising each shipment or other delivery previously or hereafter made by or on behalf of you to or in the order of us are hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act ("FFDCA"), and not an article which may not, under the provisions of section 404, 505, or 512 of the FFDCA, be introduced into interstate commerce.

4. Product Returns; Effect of Remedies; Product Recalls and Safety Alerts:

We may return or dispose of at your expense, and you will accept and reimburse us for, any Product (a) that is defective, (b) that does not conform to the stated U.S. Federal Food, Drug and Cosmetic Act requirements, (c) that is subject to recall or safety alert by a government authority or the Product's manufacturer or distributor or that we otherwise reasonably determine poses a safety risk to customers, (d) that was not ordered in the applicable PO, (e) for which you fail to promptly provide Product Safety Information upon our reasonable request, or (f) that does not comply with this Agreement. You will cooperate with the return or disposal of any Products under this Section. Title and risk of loss for all Products returned under this Agreement will pass to you upon delivery by us to the carrier. Except to the extent we otherwise agree in writing, we may also return to you or dispose of any Product that is damaged; you will accept any such return and reimburse us for the Product and any cost of return or disposal. Payment of an invoice does not limit our remedies. You will provide us with immediate written notice of any Product recall or safety alert. You are responsible for costs we incur in a recall or safety alert and for providing any required notices, information, and documents to applicable authorities or that are otherwise necessary for carrying out the recall or safety alert.

5. Vendor Defense and Indemnification: You will defend, indemnify, and hold harmless Everything Food, and their respective officers, directors, employees, and agents (the "Everything Food Party" or "Everything Food Parties") against any third party claim, liability, loss, damage, cost or expense (including reasonable legal fees) (each, a "Claim", and collectively, the "Claims") incurred by any Everything Food Party arising from or relating to: (a) any death of or injury to any person, damage to any property or any other damage or loss related to any Product; (b) any Product recall or safety alert; (c) any infringement or misappropriation of any proprietary right by any Product, Product Information, or other content you provide to us; (d) your negligence or intentional misconduct; (e) your breach of this Agreement; (f) any Product-related issue for which you or we are strictly liable; or (g) your failure to state accurate Product Information, or to promptly provide accurate Product Safety Information upon our reasonable request. However, with respect to the foregoing indemnity obligations, you will not be obligated to indemnify Everything Food Parties to the proportional extent the liability for a Claim is caused by the negligence or intentional misconduct of that Everything Food Party as determined by a final, nonappealable order of a court having jurisdiction. You will not consent to the entry of a judgment or settle any Claim without the Everything Food Parties' prior written consent, which may not be unreasonably withheld. You will use counsel reasonably satisfactory to the Everything Food Parties, and the Everything Food Parties will cooperate in the defense at your expense. If any Everything Food Party reasonably determines that any Claim might have an adverse effect, that Everything Food Party may take control of the defense at its expense (without limiting your indemnification obligations). Your obligations under this Section are independent of your other obligations under this Agreement.

6. Limitation of Liability: NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, EXCEPT FOR THOSE ARISING IN CONNECTION WITH YOUR DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT.

7. Shipping: The parties will agree which party is responsible for managing and paying for transportation of Products to Everything Food customers. Everything Food encourages Vendors to utilize Everything Food's carrier to provide all Products sold under the Vendor Portal. If Vendor chooses to utilize its own carrier then Vendor shall comply with the Direct Fulfillment Exhibit terms and conditions attached hereto.

When we pay for transportation, you will deliver the Products to the Everything Food-designated carrier and affix a pre-paid shipping label made available by

Everything Food. You agree to only use such Everything Food provided pre-paid shipping labels for sale of Products through the Vendor Portal and only to Everything Food customers. Title and risk of loss for the Products will pass to us when you deliver the Products to the carrier. When you pay for transportation, title and risk of loss for the Products will pass to us forty-eight hours after Everything Food has accepted the Products. Except to the extent that we agree otherwise, you or your designated agent will be the importer or exporter of record, as applicable, on all cross-border transfers, returns, and other shipments of Products between you and us, will not list us as the importer or exporter on any import, export or other customs documentation, and will ensure that all cross-border transfers, Product returns and other shipments comply with all import, export, and other applicable laws and regulations. Under no circumstances will we be the exporter of record for cross-border shipments of Products from you to us. As the importer and exporter of record, you or your designated agent will be responsible for payment of any taxes, duties or fees, and will be responsible for all required recordkeeping, registration, reporting, and licensing. If we expressly agree to act as the importer or exporter of record, you will prepare and submit all documents required to export Products or to bring, distribute, and sell those Products in the destination country, you represent and warrant that all documents and the information contained in such documents are complete, accurate, and up to date, and you will pay any additional fees or charges due to insufficient or incorrect documentation. We will incur no liability arising from any assistance we provide in preparing any documentation or otherwise.

8. Insurance:

You will comply with the Insurance Exhibit attached hereto.

9. Confidential Information; Publicity: You will, and will cause your affiliates and employees to, (a) protect and not disclose information that is identified as confidential or that reasonably should be considered confidential to us; (b) use this information only to fulfill your obligations under this Agreement; and (c) promptly return to us or destroy this information when this Agreement terminates. This Section covers all confidential information regardless of when you receive it. You will not, without our prior written agreement, use any trademark, service mark, commercial symbol, or other proprietary right of Everything Food, issue press releases or other publicity relating to Everything Food or this Agreement, or refer to Everything Food in promotional materials. If we authorize you to use any of our trademarks, you will comply with any policies related to such use, including any trademark guidelines.

10. Miscellaneous:

(a) Taxes: You may charge and we will pay applicable federal, national, state or local sales or use taxes or value added taxes that you are legally obligated to charge ("Taxes"), subject to your provision to us of an invoice that states such Taxes separately and meets the requirements for a valid tax invoice. We may

provide you with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case you will not charge or collect the Taxes covered by such certificate. We may deduct or withhold any taxes that we may be legally obligated to deduct or withhold from any amounts payable to you under this Agreement, and payment to you as reduced by such amounts will constitute full payment and settlement to you of amounts payable under this Agreement. You will provide us with any forms, documents, or certifications required for us to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

(b) Choice of Law; Dispute Resolution: This Agreement is governed by the U.S. Federal Arbitration Act, applicable U.S. federal law, and California state law, without reference to any applicable conflict of laws rules, the Convention on Contracts for the International Sale of Goods, or any local laws implementing the Convention on Contracts for the International Sale of Goods in any jurisdiction where the Products are sold. **Any dispute arising out of this Agreement will be resolved by binding arbitration, rather than in court.** There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our legal counsel at: bart@pivotallawfirm.com. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Commercial Arbitration Rules.

The AAA's rules are available at www.adr.org or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. Arbitration conducted in person will be in Orange County, California or at another mutually agreed location; however, you may choose to have the arbitration conducted by telephone or based on written submissions. **You and we each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration you and we each waive any right to a jury trial. You and we also both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

(c) Other: Either party may terminate this Agreement with 60 days' prior written notice. Regardless of any termination, you will fulfill all POs you accept before the effective date of termination. Section 2 (Product Images/Information), Section 3 (Representations, Warranties, and Covenants), Section 4 (Products Returns; Effect of Remedies; Product Recalls), Section 5 (Vendor Defense and Indemnification), Section 6 (Limitation of Liability); Section 8 (Insurance); Section 9 (Confidential Information); Section 10 (Miscellaneous); and the Insurance Exhibit will survive termination.

You will not assign this Agreement, or any obligation or right (including any right to payment) in the Agreement, without our prior written consent.

We may either withhold and setoff, or demand payment of, any sums you owe us, including any Taxes that we are legally required to withhold from amounts we pay you. We may withhold payment if you have not sent us an appropriate invoice in accordance with the Program Policies. If you do not dispute the amounts we pay you (including amounts we withhold or setoff) within 90 days after such payment (or any shorter period specified in a Program Policy, Additional Terms, or PO), the payment amount will become final and you may not challenge or otherwise object to such payment amount. During the term of this Agreement and for 2 years after its termination, we may request and you will provide copies of your financial records reasonably necessary to verify any transactions related to this Agreement. If you do not respond within a reasonable period after receiving a records verification request, we may deduct any amount we reasonably believe to be due from amounts we pay to you. The parties' rights and remedies under this Agreement are cumulative. Either party's failure to enforce any provision will not be a waiver of the party's rights to subsequently enforce the provision. If any provision is held to be invalid, then that provision will be modified to the extent necessary to make it enforceable, and any invalidity will not affect the remaining provisions. This Agreement incorporates, and you will, and the Products you sell to us will, comply with, the terms, conditions, policies, guidelines, rules set forth herein. To the extent there is a conflict between this Agreement and any PO, the conflict will be resolved by giving precedence in the order specified in such documents, or if not specified, the following order: this Agreement, then the applicable PO. You may use standard business forms or other communications (such as invoices, confirmations or shipping documents), but use of these forms is for convenience only and will not alter or supersede the provisions of this Agreement or POs. Email we send to any email address you have on file with us or that you have otherwise designated will constitute notice from Everything Food. This Agreement including any terms set forth in a PO constitute the entire agreement between Everything Food and Vendor for the purchase and sale of Products, and supersedes all prior agreements and discussions. The parties expressly agree that this English language version of this Agreement is definitive and that in the event of any dispute or controversy as to the proper interpretation and construction of this Agreement, the English version will prevail. Any versions provided in other languages are for reference purposes only.

11. Revisions; Continued Use: We reserve the right to change any of the terms of this Agreement, including the terms of any materials incorporated herein (unless otherwise specified by us in such materials), at any time and in our sole discretion. Any changes will be effective upon the earlier to occur of: (a) emailing the revised terms, or notice of such changes, to you at your e-mail address; or (b) posting the revised terms on the website. You are responsible for reviewing any revised terms, and any notices of revisions. YOUR CONTINUED ACCEPTANCE OF PURCHASE ORDERS OR CONTINUED USE OF THIS WEBSITE FOLLOWING OUR E-MAILING OR POSTING OF ANY REVISED TERMS, OR ANY NOTICE OF ANY SUCH REVISIONS, WILL CONSTITUTE YOUR ACCEPTANCE OF THE REVISIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS AGREEMENT OR THE PROGRAM POLICIES, YOU MUST STOP ACCEPTING PURCHASE ORDERS AND STOP USING THIS WEBSITE, AND GIVE

US WRITTEN NOTICE.

INSURANCE EXHIBIT

At your expense you shall maintain commercial general liability insurance coverage (which must include products liability coverage appropriate for each Product for sale on the Vendor Portal) of at least \$1 million USD per occurrence. You must maintain your insurance coverage for 12 months after the expiration or termination of this Agreement.

Your required minimum limits of insurance may be satisfied by any combination of primary and excess/umbrella liability insurance policies. You will name "Everything Food" and their respective officers, directors, employees, and agents" as additional insureds on each insurance policy required by this Exhibit. Each of these policy coverages will be on a primary basis with any insurance maintained by us, and our insurance shall be excess of all insurance maintained by you. You will provide us with 30 days' advance notice of cancellation, significant modification or expiration of each policy.

Upon request, you will provide a certificate of insurance and a copy of any applicable endorsement evidencing our additional insured status for each insurance policy required by this Exhibit to Everything Food's Risk Management via upload to Everything Food in the Vendor Portal. Our approval of your insurance does not relieve you of any obligations, including but not limited to your defense and indemnity obligations, even for claims over your policy limits. If you fail to perform any of your obligations in this Exhibit, we may withhold payments owed to you until you meet these obligations.

Everything Food Identification Products Exhibit

Everything Food Intellectual Property: We reserve all rights in the information and materials, including Everything Food materials, provided to you by us or our authorized third party. Except as expressly set forth in this Agreement, we do not grant to you any license, right, title or interest in, to, under or with respect to any trade secrets, designs, patents, trademarks, copyrights, inventions, data, trade dress, financial information, marketing plans, strategies, projections, or any intellectual property held by us ("Everything Food Intellectual Property"). Upon our request, you will provide us with all information and documentation that is known to you relating to Everything Food Intellectual Property. You will assist us in any related proceeding or litigation, and will promptly execute and deliver to us or our legal representative any papers, affidavits and declarations and take such other action as we request to apply for, obtain, maintain, and enforce our rights in the Everything Food Intellectual Property.

License: If we agree with you to use, mark or label any Products with a trade name, trademark, logo, service mark, trade dress or design ("Everything Food Identification"), you will apply this marking or labeling, or use said trade dress, only on the quantity and in the manner specified. If we agree with you to mark any Products with Everything Food Identification, we grant you a non-exclusive, non-transferable, royalty-free, non-assignable and revocable right and license during the term of the Agreement to reproduce and display, without alteration of any kind, the Everything Food Identification solely on the designated Products and solely as directed by us. You may not transfer, assign or sublicense these rights or otherwise permit any other party other than a subcontractor to use the Everything Food Identification.

Note: We actually would want vendors to use our mark on channels outside of our platform. For example, if use give a Score in our Everything Food Badge, then we want to encourage that they print it on their product labels and those can go to other distribution channels outside of the Platform.

Work Product: If we designate Products to be sold by you with Everything Food Identification ("Work Product"), then we own and retain all intellectual property rights in and to the Work Product and will have the right to apply for, register, obtain, and hold in its own name any and all intellectual property rights with respect to the Work Product. You will not create Work Product that infringes, misappropriates or otherwise violates any third-party rights. You represent, warrant, and covenant that you own all right, title and interest in and to any copyright, design, print, cut-out, lace, embellishment, appliqué, and/or fabric design

(collectively, the "Print Design") not provided by us, that is incorporated in any Proprietary Product, and that the Print Design is not an unauthorized copy. If it is determined that you incorporated a Print Design in violation of the preceding sentence, you will immediately take steps to remedy the violation, including without limitation, providing additional assurances or alternative designs, or obtaining any necessary licenses or rights. We will have full and unlimited rights to make, have made, use, reproduce, sell, offer for sale, import, export, and distribute the Work Product without any claim or right thereto by you or your agents for additional compensation, and you will not make, use, reproduce, sell, offer for sale, import, export or distribute the Work Product for or on behalf of any other person or entity without the express written consent of Everything Food. Without limiting our ownership rights outlined above in this paragraph, you hereby irrevocably assign to us, our successors and assigns all right, title, and interest in and to the Work Product, including all intellectual property and proprietary rights embodied or incorporated in the Work Product or developed in the course of your production, creation or development of the Work Product, including without limitation all copyrights, trademarks, trade dress, service marks, patents, designs, Print Designs, recipes, formulas, formulations and trade secrets. You will execute all applications, assignments or other documents of any kind and take all other legally necessary steps under the law of any applicable jurisdiction or any international regime required for us to apply for, register, obtain, protect, perfect or enforce our rights, title, and interest in the Work Product. You appoint us as your attorney-in-fact to execute assignments of, and register all rights to, the Work Product and the proprietary rights in the Work Product.

Representations and Warranties: You represent, warrant, and covenant that all Everything Food Identification and the designated Products that bear such identification (a) will be manufactured by you in accordance with any specifications and compliance requirements and (b) are of merchantable quality and good material and workmanship, are free of contamination, and are fit and sufficient for purposes for which goods of that type are ordinarily used. You also represent, warrant, and covenant that the design and/or manufacturing process for all Everything Food Identification and the designated Products will not violate any third party's rights, including without limitation, any intellectual property right where such Products may be imported into and/or sold.

Subcontracting: You will not subcontract or delegate any of your obligations under the Agreement, including in this Section, to any third parties without our prior written consent. If we consent to the use of any Subcontractor, you will ensure that such Subcontractor is bound to the terms of the Agreement and provide a copy of any subcontract entered between you and such Subcontractor to us upon request. Each subcontract will name us as a third party beneficiary of the subcontract. Notwithstanding our consent or the existence or terms of any subcontract, you are responsible for the full performance of your obligations under the Agreement and for your Subcontractors' compliance with the terms of the Agreement.

DIRECT FULFILLMENT EXHIBIT

If the parties determine that you will provide packing and shipping fulfillment services, as described in this Section ("Direct Fulfillment Services"), then you will comply with this Section; otherwise, this Section will not apply.

This Section will only apply to sale of Products that we designate for Direct Fulfillment Services ("Direct Fulfillment Products"), and as applied to purchases of Direct Fulfillment Products and the performance of Direct Fulfillment Services the provisions of this Section will control over any inconsistent provision of this Agreement.

Direct Fulfillment Services: We will have the right to fulfill any of our customer orders for Products by issuing a PO to you designated for Direct Fulfillment Services (a "Direct Fulfillment PO") and utilizing the Direct Fulfillment Services for such Direct Fulfillment Products. Any of our affiliates will have the right to issue a Direct Fulfillment PO under this Agreement, and Direct Fulfillment POs are the separate obligation of the affiliate that issues the Direct Fulfillment PO.

Everything Food Customers: Our customers are not, by virtue of this Section or the rest of this Agreement, your customers. You will not handle or address any contacts with any of our customers, and, if contacted by any of our customers, you will state that those customers must follow contact directions on the web site on which the purchase was made to address customer service issues; provided that this Section will not restrict you with respect to people or entities who are our customers but contact you for matters unrelated to us, the Direct Fulfillment Products or the Direct Fulfillment Services, or with respect to distributing and processing product warranty cards.

Compensation: Your compensation for the purchase of the Direct Fulfillment Products and for the performance of the Direct Fulfillment Services (including without limitation all labor, materials, costs, and expenses of the Direct Fulfillment Services) is included in the price invoiced for the related Product(s), and (except as set forth in any applicable Direct Fulfillment Program Policies, as defined below, with respect to reimbursement for shipments on your carrier accounts) you will not be entitled to, and we will not pay, any other fees, costs, accessorial, additional, expenses, charges, surcharges, taxes, tariffs or other compensation or reimbursement in connection with the Direct Fulfillment Services.

Warranties: You represent, warrant, and covenant that you will comply with all laws, regulations and rules relating to the Direct Fulfillment Services.

Tax Matters: We will provide you with a resale exemption certificate, either with respect to the Multi-State Tax Commission or to any other jurisdiction we deem appropriate in our sole discretion, with respect to any purchases of Direct Fulfillment Products. You accept such resale exemption certificates with respect to Direct Fulfillment Products and Direct Fulfillment Services and will not charge to (or

seek reimbursement from) us any sales, use or similar taxes ("Sales Taxes"), add separate line items on invoices for any Sales Taxes, or add any statement to the invoices stating that the Direct Fulfillment Product or Direct Fulfillment Service prices include Sales Taxes. You will be solely liable for, and will indemnify and hold us harmless against, any and all Sales Taxes assessed or claimed upon the sale or provision of any Direct Fulfillment Products or Direct Fulfillment Services under this Agreement and against all interest, penalties, costs, and expenses (including attorneys' fees) related to such Sales Taxes. Each of the parties will use commercially reasonable efforts (at its own expense) to cooperate and provide assistance to each other with respect to any potential state or local Sales Tax audit in connection with the Direct Fulfillment Services; provided that no party will be required to provide information that is not readily available using such party's existing information systems, and no party will be required to modify or create new systems to obtain or process any such required or requested Sales Tax information. We may terminate this Section in its entirety or with respect to any Direct Fulfillment Product or any facility from which you provide Direct Fulfillment Services (or group of Products or facilities) if we determine that the Direct Fulfillment Services or related transactions are causing or are reasonably likely to cause any adverse tax effect.

Miscellaneous: This Exhibit incorporates, and you, the Direct Fulfillment Products you sell and the Direct Fulfillment Services you provide will comply with, the terms, conditions, policies, guidelines, specifications, rules, and other information applicable to the Direct Fulfillment Services and accessible on this web site for vendors ("Vendor Site") at the time of Direct Fulfillment Product shipment ("Direct Fulfillment Program Policies"), including without limitation any updates to such Direct Fulfillment Program Policies from time to time. To the extent there is a conflict between this Section and the Direct Fulfillment Program Policies, the terms of the Section will control. No force majeure or similar provision excusing performance that applies generally under this Agreement will be deemed to apply to the obligation to perform the Direct Fulfillment Services.

Revisions; Continued Use: Direct Fulfillment Program Policies are incorporated as terms of the underlying Agreement, and are subject to change in accordance with Section 11 of the Agreement. YOUR CONTINUED ACCEPTANCE OF DIRECT FULFILLMENT POS OR CONTINUED USE OF VENDOR SITE FOLLOWING OUR E-MAILING OR POSTING OF ANY REVISED TERMS, CONDITIONS, OR DIRECT FULFILLMENT PROGRAM POLICIES, OR ANY NOTICE OF ANY SUCH REVISIONS, WILL CONSTITUTE YOUR ACCEPTANCE OF THE REVISIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS EXHIBIT (INCLUDING WITHOUT LIMITATION THE DIRECT FULFILLMENT PROGRAM POLICIES), YOU MUST STOP ACCEPTING DIRECT FULFILLMENT POS.