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CA 567377

MANUFACTURING AND SUPPLY AGREEMENT

This contract manufacturing and supply agreement ("Agreement") made on 17th day of April, 2019 by and between:

PepsiCo India Holdings Pvt. Ltd., a Company incorporated in India having its registered office at Level 3-6, Pioneer Square, Sector 62, Near Golf Course Extension Road, Gurugram – 122101, Haryana, India ("Company" which expression unless repugnant to the context shall mean and include, Affiliates, associate companies, its successors and assigns);

AND

Symega Food Ingredients Ltd, a Company having its registered office at Synthite Taste Park, No XI 312G, Pancode, Vaddavucode Kerala- 682310 ("Manufacturer" which expression shall unless repugnant to the context or meaning thereof be deemed to include their Affiliates, its successors and assigns);

(Company and Manufacturer are hereinafter collectively referred to as the "Parties" and individually as a "Party").

39923 Date 15.4.19 Rs. 10/-
No. Sold to Symega food ingredients LTD
Pancode

[Signature]

SYNTHITE TASTE PARK * PANCODE * 682310 * SYMEGA FOOD INGREDIENTS LTD * TREASURY * 070119 * 682311 *

RECITALS

1. Company desires to manufacture, process, package certain products for sale to Company for distribution by Company under marks owned by or licensed to Company as set forth on Annexure F (Trademarks), as amended from time to time; and
2. Manufacturer possesses the skill and experience necessary to manufacture, process package and store such products and is willing to do so under the terms and conditions of this Agreement.

TERMS AND CONDITIONS

In consideration of the recitals stated above, and the terms and conditions set forth below, the parties agree as follows:

1. DEFINITIONS

In this Agreement (including the recitals hereof) the following expressions shall have, where the context so admits, the meanings assigned thereto.

- 1.1. **"Affiliate"** means an entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the entity specified.
- 1.2. **"Allergen-containing Goods"** shall have the meaning given in Clause 6.4.
- 1.3. **"Agreement"** means this Agreement together with Annexures hereto and shall include any modifications and alterations hereto made in writing, after the date of execution of this Agreement.
- 1.4. **"Calendar Year"** shall mean the year starting from January and ending in December.
- 1.5. **"Competitor"** means any product in competition with the Products of Company / PepsiCo Related Entities.
- 1.6. **"Confidential Information"** shall have the meaning given in Clause 8.1.
- 1.7. **"Confirmed Order"** means the Order confirmed by the Manufacturer through a Proforma Invoice (as defined below).



- 1.8. "**Conforming Products**" shall have the meaning given in Clause 6.8.
- 1.9. "**Conversion Fee**" shall mean the conversion cost of Raw Materials and Packaging into the finished Product, as set out in **Annexure G**;
- 1.10. "**Difference**" shall have the meaning given in Clause 22.2.
- 1.11. "**Effective Date**" means 1st March, 2019.
- 1.12. "**Equipment**" shall have the meaning given in Clause 6.3(c).
- 1.13. "**Facilities**" shall have the meaning given in Clause 2.7(f).
- 1.14. "**Force Majeure**" shall have the meaning given in Clause 16.1.
- 1.15. "**Licenses**" means all clearances, licenses, registrations and/or permits required by law in relation to the import of materials and manufacture, processing, packing and/or sale of the Product.
- 1.16. "**Loss Allowances**" shall have the meaning given in Clause 7.11(a).
- 1.17. "**Manufacturer's Books**" shall have the meaning given in Clause 14(f).
- 1.18. "**Materials**" shall have the meaning given in clause 5.1.
- 1.19. "**Notice**" shall have the meaning given in Clause 23.
- 1.20. "**Order**" shall have the meaning given in Clause 2.2.
- 1.21. "**Package Designs**" shall have the meaning given in clause 5.9.
- 1.22. "**Packaging Material**" means such material purchased by Manufacturer for use by Manufacturer in packaging the Product more specifically mentioned in **Annexure C**.
- 1.23. "**PepsiCo Related Entities**" means PepsiCo, Inc. and its Affiliates.
- 1.24. "**Plant**" means Manufacturer's manufacturing facility located at Synthite Taste Park, Building no. XI 312/G, Pancode, Ernakulam- 682310 which shall be used in the manufacture of the Products (as defined hereunder) more specifically set out in **Annexure A** hereto.
- 1.25. "**Product**" or "**Products**" means and refers to products as described in **Annexure A** hereto. Company may at its discretion add or delete a product from Annexure A from time to time.
- 1.26. "**Proforma Invoice**" means and refers to the formal invoice issued by the Manufacturer which includes confirmation of quantity, price, production date and delivery date as set out in the Order.
- 1.27. "**Purchase Price**" shall have the meaning given in clause 7.1.
- 1.28. "**Raw Materials**" means and includes all such material purchased by Manufacturer which is required for the purpose of manufacturing the Product more particularly mentioned in **Annexure B**.
- 1.29. "**Specifications**" means the specifications and quality standards and quality control procedures specified by Company from time to time to be adhered to by Manufacturer in the manufacture and quality of the Product and shall include the Specifications set out in **Annexure D** hereto.
- 1.30. "**Term**" of the Agreement will mean a period of 2 (two) years from the Effective Date.



- 1.31. "**Total Value**" shall mean the maximum retail price of a finished Product mentioned on the Product.
- 1.32. "**Trademarks**" means the trademarks owned by or licensed to Company and shall include the trademarks as set out in **Annexure F**.
- 1.33. "**Yield**" means total output of Raw Material and Packaging Material and is specifically mentioned in **Annexure E**.

Headings and Clauses are for sake of convenience only and shall not form part of the operative provisions of this Agreement.

2. ORDERS, SUPPLY & DELIVERY:

- 2.1 Manufacturer agrees to manufacture and supply the Product to Company under the Trademarks at its Plant.
- 2.2 (a) Company shall place in the first week of every month for the forthcoming 3 (Three) months rolling plan (wherein the first month plan shall be confirmed by issuance of a Purchase Order within 21 (Twenty One) days of the issuance of the Plan and the second/third month plan shall be rolling forecast, which are indicative) with the Manufacturer on a monthly basis for such quantities of Products as required by Company ("Order"). The Company shall have right to seek volumes of the Products to the full capacity (i.e. 130 MT) which will be agreed between the Company and Manufacturer based on established norms of capacity utilization.
- (d) Delivery schedules will be communicated by way of Company giving the Manufacturer an Order for the next month's requirement. The Manufacturer agrees and undertakes to manufacture and pack the Products ordered on a monthly basis in accordance with the schedule mentioned herein and according to the Specifications, manufacturing conditions, standard yields, process losses and standards of quality, to be mutually agreed in writing by both the parties.
- 2.3 Manufacturer shall, if so required by Company, store each batch of the Products manufactured hereunder beyond the stated delivery dates and until instructed to release such batch(es) by Company
- 2.4 The Manufacturer agrees to deliver the Products in accordance with the delivery schedules stipulated by Company from time to time in the Orders. The delivery point is at the gate of the Plant of the Manufacturer. The Manufacturer, on request of the Company, will make arrangements for delivery of the Products in compliance with Company's directions to such address as Company may communicate to the Manufacturer in writing. The Company shall reimburse the additional costs in relation to such delivery to the Manufacturer.. The Manufacturer will ensure Products are ready for shipment within fourteen (14) days of the date Manufacturer receives Company's Order.
- 2.5 Subject to the terms of this Agreement, and at the orders and direction of Company, the Manufacturer agrees to:
- (a) Unload, store and handle the Raw Materials and the Packaging Materials in accordance with the Specifications;
- (b) Mix, process, test, sample and pack the Products in accordance with the Specifications;
- (c) Procure and dedicate such facilities, equipment, warehouse storage space, services, supplies and Materials for production, packing and storage of the Products as may be necessary or commercially reasonable for the performance by the Manufacturer of its obligations under this Agreement in accordance with the Specifications under **Annexure D**;
- (d) When ready for delivery, load the Products onto the transport carriers specified by



Company in accordance with the Specifications.

- (e) Place the Products on pallets, as specified and approved by the Company which shall be provided by a third party.

- (f) At all times, Manufacturer will keep sanitary all facilities used to receive, hold, transport manufacture and/or package the Materials and finished Products (the "Facilities"); Company and/or its authorized agents, including independent food consultants or inspectors, may inspect the Manufacturer's Facilities (including storage areas) without prior notice during the Term, and the Manufacturer's employees and agents will cooperate fully with Company and/or its agents during any inspections. Manufacturer will provide Company with unrestricted access for any inspections during working hours to all areas of the Manufacturer's Facilities where Products and/or Materials are stored. If Company uses an independent food consultant or inspector, Company will secure an agreement of confidentiality in favor of the Manufacturer consistent with this Agreement.

- (g) Manufacturer will immediately notify the Company in writing if Manufacturer is cited by any governmental agency if the citation could adversely impact the production or sale of the Products. For the duration of the citation, Company may reject any Products that are manufactured or packaged at the cited Facilities or Products that incorporate any Materials stored at the cited Facilities.

2.6 Manufacturer shall not produce Products in excess of the agreed production schedule with Company.

2.7 The Manufacturer shall, if so required by Company, store for a maximum of fifteen (15) calendar days the finished Products manufactured hereunder, at no cost to Company.

2.8 The Manufacturer shall ensure that all Products at the date of export/dispatch/delivery (delete as appropriate) as directed by Company, shall have a minimum of ninety percent (90%) of its shelf life remaining.

2.9 Without limiting the Company's rights under this Agreement, if at any time the Manufacturer considers that it will be unable to meet the Company's forecasted requirements for any Products (as agreed under clause 2.2 or fulfil any outstanding Order:

(a) the Manufacturer must immediately notify the Company in writing of those circumstances and the reasons; and

(b) the parties will discuss alternative arrangements with a view to ensuring that the Manufacturer will be able to fulfil all outstanding Orders and to meet all of the Company's forecasted requirements for Products.

2.10 Notwithstanding the foregoing, and without prejudice to the Company's other rights, the Company may make alternative arrangements for the purchase of any Products which are the subject of a notice by the Manufacturer under this clause 2.10, at its absolute discretion, and may cancel any outstanding Order which the Company considers the Manufacturer will be unable to fulfil. Unless the Manufacturer's inability to meet Company's forecasted requirements for any Products or to fulfil any outstanding Order is due to a Force Majeure and the Manufacturer has complied with its obligations under clause 16, the Manufacturer will be liable to compensate the Company as below:

Range of Volumes Loss Per month	Compensation to Company by Manufacturer
>5% and up-to 10% of the Order quantity	20% of Sales Price before taxes on the entire volume loss



More than 10% of Order quantity	40% of Sales Price before taxes on the entire volume loss
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2.11 Amendments to Specifications and Proposed Products

(a) Company proposals

The Company may from time to time request an amendment to the Specifications or propose a new type of Product not already included in the Specifications ("Proposed Product") by giving notice in writing to the Manufacturer. The Manufacturer will use its best endeavours to accommodate any such request. On receipt of such notice from the Company, the Manufacturer must, within fifteen (15) days, notify the Company whether it is able to accept the requested amendment to the Specifications or the addition of the Proposed Product. This notification will include, in the case of any amendment to the Specifications, details of any proposed consequential change to the Purchase Price of the relevant Product (as per Clause 7.1) or, if the request relates to a Proposed Product, the price at which the Manufacturer will offer to supply the Proposed Product (and provide full and reasonable explanations to the Company supporting any consequential change to the Purchase Price of the existing Product or the proposed price for the Proposed Product (as the case may be)). Prices of Proposed Products or any change in the Purchase Price of any Product as a result of any request to amend the Specifications for a Product are to be set on a basis which is consistent with the price of similar Products and any cost model previously agreed between the Parties. If the Manufacturer notifies the Company that it will be unable to comply with the Company's request to amend the Specifications for any Product or supply any Proposed Product, the Company may obtain those products from a third party.

(b) Total Purchase Price amendment

If the Manufacturer notifies the Company pursuant to clause (a) that an amendment to the Specifications of a Product proposed by the Company will require a consequential change to the Purchase Price of the Products ("Amended Purchase Price"), the Company may:

- (i) accept the Amended Purchase Price offered by the Manufacturer, in which case, the amended Specifications and Amended Purchase Price will immediately become the Specifications and Purchase Price in respect of the relevant Products manufactured after that date, unless otherwise agreed; or
- (ii) reject the Amended Purchase Price offered by the Manufacturer and leave the Specifications unchanged.

In the event that the Company rejects the Amended Purchase Price offered by the Manufacturer, the Company may continue to obtain the relevant Products from the Manufacturer or it may obtain the relevant Products from a third party supplier provided that the price payable to that third party is lower than the Amended Purchase Price offered by the Manufacturer.

(c) Price of Proposed Product

In respect of a Proposed Product, the Company may:

- (i) accept the Conversion Fee or revised Conversion Fee offered by the Manufacturer, in which case, that price will immediately become the Conversion Fee for the Proposed Product; or



- (ii) reject the Conversion Fee offered by the Manufacturer and notify the Manufacturer that the Manufacturer will not be required to manufacture and supply the Proposed Product (in which event the Company may obtain the Proposed Product from a third party provided that the price payable to that third party is lower than the price for the Proposed Product offered by the Manufacturer).

(d) No amendments by Manufacturer

The Manufacturer must not make any amendment to the Specifications without the prior written consent of the Company.

2.12 Deletion of Products

The Company may, by not less than sixty (60) days' notice in writing, notify the Manufacturer that it will be deleting the Product and will no longer require the Manufacturer to supply any of the deleted Products for the remainder of the Term. The Manufacturer, upon receipt of the sixty (60) days' notice, shall intimate the Company in writing, the inventory and the outstanding orders of the raw materials and packaging materials in relation to the product proposed to be deleted. The Company, upon receipt of the communication from the Manufacturer, shall purchase the redundant raw materials and packaging materials from the Manufacturer.

The Company may cancel or amend an Order in any respect at any time, on reasonable written notice to the Manufacturer prior to the delivery date of the Products specified in that Order, provided that the Manufacturer has yet to manufacture the relevant Products specified in that Order. In the event the Company cancels a Confirmed Order, the Company shall pay Manufacturer the Purchase Price due and payable for the Products produced in relation to a Confirmed Order, as per the rolling forecast. Company agrees to make payments for all non-cancellable orders placed by the Manufacturer for Materials purchased in relation to the Confirmed Order as per the rolling forecast.

3. INDEPENDENT CONTRACTOR:

3.1 It is expressly understood and agreed that:

- (a) Manufacturer is and will be an independent contractor and the relationship between the Company and the Manufacturer is of Principal to Principal basis with respect to the terms of this Agreement.
- (b) Manufacturer does not and will not have any express or apparent authority to bind Company in any manner whatsoever;
- (c) Manufacturer and all persons hired by the Manufacturer are and will be the Manufacturer's employees, subcontractors, and/or agents and under no circumstances shall Manufacturer or Manufacturer's employees, subcontractors or agents be deemed to be Company's employees;
- (d) Manufacturer is solely liable for the acts or omissions of its employees, subcontractors, agents and/or suppliers (including Raw Materials and Packaging Materials); and
- (e) Manufacturer is solely responsible for management of all suppliers and third party contractors, adherence to all schedules and execution of all Orders placed hereunder.



- 3.2 Manufacturer shall be solely, responsible for the employment of workers and for discharging all obligations to or in connection with such employees for payment of wages, salaries and providing all amenities and benefits that may be required according to the law for the time being and from time to time in force and applicable to its establishment and/or for the workers employed therein. It is expressly agreed between the Parties that any statutory liability arising out of employment, non-employment (including accidents) of workers will be to the account of Manufacturer.
- 3.3 Company shall not assume any liabilities of Manufacturer arising out of its manufacturing operations at the Plant, under this Agreement or otherwise howsoever, whether disclosed or undisclosed. All employee, labour and or compensation liabilities relating to the Plant shall be the responsibility of Manufacturer.

4. EXCLUSIVE ARRANGEMENT

- 4.1 Manufacturer agrees that the Recipe used for the manufacture of the Product together with the manufacturing process are proprietary in nature. Manufacturer will also be provided with technical know-how on the process of manufacture of the Product by the Company, which is also proprietary in nature. During the Term of this Agreement, Manufacturer shall not use any portion of the Plant where such portion is being utilised for the manufacture of Company Products, for the manufacture of any products of any Competitor or for products under trademarks/brands in the same category as the Products which do not belong to or licensed to Company. When required, Manufacturer shall make available such portions of the factory building, dispatch room, warehouse, go-downs and office space in the factory premises, as may be required for the purpose of storage of Raw Materials and finished Products required in/resulting from the manufacturing operations in terms of this Agreement.
- 4.2 Manufacturer shall not without prior written approval of Company sell or dispose of the Products, assets or material of Company to any other person or company.
- 4.3 Manufacturer agrees that in view of Clause 4.1 above, during the Term, or any renewal, Manufacturer will not directly or indirectly enter into any similar arrangement with any Competitor of Company [or any PepsiCo Related Entity] for manufacture or marketing of any products derived from formulae, recipes, Specifications, or technologies provided and/or owned by Company [or any PepsiCo Related Entity] now or at any time in the future.
- 4.4 During the Term hereof, and any renewal thereof, Manufacturer shall grant Company a "right of first refusal" with respect to any innovations of any type and/or product launches, where the innovations were jointly developed by the Parties. Manufacturer shall notify Company in writing of the innovation(s) and/or the product(s) launch(es) and Company shall have a period of one (1) year from the date of such notification to inform Company of its decision to launch said innovation/product or not, provided that Company shall launch said innovation/product no later than fifteen (15) months from the date of notification.

5. RAW MATERIALS AND PACKAGING

- 5.1 Manufacturer will procure all Raw Materials required for the production of the Products, including ingredients, Packaging Materials and other materials as may be required ("Materials").
- 5.2 Manufacturer shall be responsible for contracting, delivery, inventory management, inspection and quality control of all Materials relating to the manufacture and packaging of the Products, provided however, that Company shall have the right to approve or disapprove any supplier used by Manufacturer for the Products and Company may revoke its approval of any supplier in its sole discretion at any time. Company may recommend to Manufacturer that certain Materials be sourced from approved third parties.
- 5.3 Manufacturer will comply with PepsiCo Inc.'s Supplier Raw Material Food Safety Policy set forth



in **Annexure I**, as amended from time to time.

- 5.4 The Manufacturer will inspect on delivery and at the time of usage, and accept or reject, all Materials, including any Materials provided by Company. In its inspection, the Manufacturer will determine whether the Materials are (1) in good and merchantable condition and fit for use for the purposes intended and (2) in compliance with the requirements of this Agreement, Company's Orders, all Product Specifications, and (3) in adherence with the Company's Facility Food Safety Policy, the Company's Raw Material Quality and Food Safety Policy and the Co-Manufacturing Supply Quality Handbook (a copy of each are set out in **Annexure H**) (altogether referred to as the "**Company Quality and Food Safety Requirements**") as may be applicable and will be provided by the Company to the Manufacturer. Manufacturer shall document and report to Company any Materials that are not in merchantable condition or fail to comply with the requirements of this Agreement, Company's Orders, all Specifications as directed by Company and any violation of the Company's Quality and Food Safety Requirements. Neither Company's approval of a supplier, Company's supply of Materials nor Company's direct purchase of Materials from a supplier will operate to release the Manufacturer from its obligations under this paragraph or its representations, guarantees and indemnity obligations under this Agreement.
- 5.5 If requested by Company, the Manufacturer will provide Company with an inventory position for Materials every [two (2) weeks]. The Manufacturer will use its best efforts to reduce its inventories of bulk Raw Materials unique to the Products to zero by the expiration of this Agreement unless otherwise directed by Company.
- 5.6 Manufacturer will store Materials in proper hygienic conditions and in accordance with the recommended temperature/humidity agreed upon under **Annexure D** and as mutually agreed to in writing between the Parties. Manufacturer shall not hypothecate, charge, create any lien, sell, transfer, lease or dispose of, in any manner, the Materials purchased from Company approved vendors, or enter into any arrangement in terms whereof the ownership or possession of the Materials or any portion thereof is handed over to any third party.
- 5.7 During the Term, Company may change the formulas, recipes or specifications for the Products and/or Materials and/or and terms of the Company's Quality and Food Safety Requirements.
- 5.8 Company will supply the package designs, including any trade dress, trademarks and trade names to be used for the Products ("**Package Designs**"). The Manufacturer may use the Package Designs and any packaging Materials that display or incorporate the Package Designs, such as cartons and film, only to package the Products for Company. The Manufacturer may not use any package designs in connection with the Products other than the Package Designs supplied by Company.
- 5.9 The Manufacturer acknowledges that all elements of the Package Designs, including Trademarks and trade dress used for the packaging, and any copyrights in or to the Package Designs, are either owned by or licensed to Company or its Affiliates, and Manufacturer neither has nor will acquire by this Agreement any right in or to any part or all of the Package Designs. In addition, all use of the Package Designs by the Manufacturer will inure strictly to the benefit of the trademark owner. Any changes to the Package Designs made or suggested by Company or Manufacturer will be the exclusive property of Company or Company's licensor.
- 5.10 The Manufacturer may not use any pre-printed packaging Materials (including cartons or film) or any tag, label, imprint, plate, film or other device to print or affix any Package Design, notice or other information on the packaging unless they have been supplied or approved in writing by Company; provided, however that Company's supply or approval will not constitute a waiver of Company's rights or Manufacturer's obligations under this Agreement. Company will pay for and exclusively own all plates used or designed to print Product packaging. Upon the termination or expiration of this Agreement or Company's request, the Manufacturer will return all plates and any copies to Company.



- 5.11 The Manufacturer will comply with any Trademark use guidelines promulgated by Company, including printing correct Trademark notices on the packaging. In addition, the Manufacturer will print any notice or information required by Company or by any applicable law or regulation, including labeling laws and regulations.
- 5.12 Company shall, for the purposes of compliance of statutory declarations, have the right to print/use Manufacturer's name and Plant address details along with Manufacturer's subsisting license no. issued by Food Safety and Standards Authority of India ('FSSAI') in relation to the Products on its packaging material including but not limited to Product laminates, cartons etc. during the term of this Agreement and 1 (one) year post termination or expiry of this Agreement as the case may be.
- 5.13 The Company shall compensate the Manufacturer for the cost of the materials, procured by the Manufacturer in accordance with provisions of clause 2.2 a, and have become redundant or expired under the following circumstances:
- (a) Change in formulation
 - (b) Change in artwork
 - (c) Deletion of the Product from Annexure A
 - (d) Shortfall of quantities in confirmed order as against the forecast

6. QUALITY & GUARANTEE

- 6.1 Manufacturer shall comply with all requirements, rules and regulations prescribed by any health, sanitary and food authorities and environmental laws in relation to the manufacture of the Product.
- 6.2 Manufacturer will comply with directions and Specifications prescribed by Company for the Products including quality control procedures.
- 6.3 Manufacturer shall ensure that:
- (a) The Equipment and machinery at the Plant are maintained in thoroughly clean and sanitary condition.
 - (b) The manufacture of the Products and maintenance and operation of the Plant and Equipment in compliance with all national, state, municipal, local and other Government laws, decrees, ordinance, rules, orders and regulations.
 - (c) It obtains and maintains at its sole cost and expense all equipment and capital required to manufacture the Products ("Equipment"). The Manufacturer shall be solely responsible and liable for the successful, maintenance and operation of all Equipment and for all other expenses and capital investments required to produce the Product under the terms of this Agreement, including but not limited to any and all costs for improvements or modifications to its Facilities. Upon the termination of this Agreement, Company will not be required to reimburse the Manufacturer for any capital expenditure or to purchase from the Manufacturer any Equipment.
 - (d) It applies for, obtains and maintains in force all permits, consents, licenses, etc. that may be required under any law, rule, regulations etc., for the time being in force in India applicable to it or to the said Plant and required or necessary for carrying out the obligations under this Agreement.
- 6.4 The Manufacturer must fully disclose to Company the presence of any recognized allergenic ingredients used in connection with the Product and, if applicable, adequately label such on the Product and/or packaging. If the Manufacturer becomes aware that any of the Products are or may become infested, adulterated, contaminated, or in violation of laws or regulations or are or may become harmful to persons or property whether the Products are used in the same mode as when delivered or whether the Products are used in the manufacture of, or become part of Company's



products, or that the design or construction of the Products is or may be defective in any manner,
Manufacturer shall immediately give notice to Company thereof, including all relevant information

with respect thereto.

- 6.5 Company may designate one resource being a Techno-Commercial Executive for the purpose of monitoring the quality of the Products during the process of manufacture and the use of Materials for the manufacture of the Products. Manufacturer will provide appropriate office space in the Plant or the accompanying office complex to enable these resources to operate in the Plant. Manufacturer will provide these resources with all possible cooperation and documentation for performing their duties.
- 6.6 Subject to Company's right to require the Manufacturer to undertake the direct defense of any matter covered by the indemnity in clause 12, Company shall be the primary point of contact for any consumer complaints involving the Products. The Manufacturer agrees to co-operate promptly and fully in investigating any complaint. The Manufacturer shall provide any information requested by Company in relation to any complaint within five (5) days of such request.
- 6.7 Manufacturer shall maintain complete records of in line process parameters as per the mutually agreeable formats. Such records will be made available to representatives of Company on demand. Manufacturer agrees to allow technical and process audits of its facilities by representatives of Company from time to time. Manufacturer will be bound by and accountable for any deficiencies noticed on any quality sampling carried out by Company directly or by any agency commissioned by Company, on Products picked for this purpose from the warehouse or the manufacturing facility of the Manufacturer.
- 6.8 The Manufacturer will deliver to Company, for acceptance by Company, Products that have been manufactured, packaged and delivered in compliance with this Agreement and Company's Orders ("Conforming Products"). Company may reject or revoke acceptance of any non-Conforming Products upon Company's discovery of defects or other non-conformities at any time.
- (a) If Company rejects or revokes acceptance of the non-Conforming Products, upon Manufacturer's request Company will send to the Manufacturer a representative sample of the non-Conforming Products. Unless otherwise agreed upon by the parties in writing, the Manufacturer will destroy or pay for destruction of any non-Conforming Products. The Manufacturer's failure to produce quantities of Conforming Products ordered for a particular Order will not affect price or delivery terms in effect for other Orders made at or near the same time.
- (b) In addition to Company's rights under clause 12 of this Agreement, upon Company's rejection or revocation of its acceptance of Products, or Manufacturer's failure to meet the terms of an Order in whole or in part, Company shall, at its sole option, direct the Manufacturer to (a) pay to Company the Purchase Price in accordance with Clause 7 herein, of the rejected or missing Products if Company has already paid for the Products through a direct payment to Seller, or (b) apply a credit in the amount of the Purchase Price towards Company's future payments, and/or (c) replace the rejected, revoked and/or missing Products with Conforming Products at no additional cost to Company, within seven (7) days of Company's demand to Manufacturer. Company may also choose to replace any non-Conforming Products from any other source, and the Manufacturer will reimburse Company for the difference, if any, between the cost of the replacement products and the most recent Purchase Price paid by Company for the Products.
- 6.9 Make available to Company for distribution all finished Product, on a first-in, first-out basis, in accordance with Company's instructions.
- 6.10 The Manufacturer will provide maximum efficiency in its manufacture and packaging of the Products. The Parties acknowledge that execution of this Agreement is contingent upon the Manufacturer's ability to provide the capacity incorporated herein, or the manufacture of the Products During the term of this Agreement if Manufacturer has any excess or future capacity for



the manufacturer of the Products, Manufacturer shall grant Company a "first right of refusal" with respect to use of the excess or future capacity for producing the Company Products.

- 6.11 Manufacturer represents, warrants and guarantees that, on the date of delivery to Company, the Products will be in good and merchantable condition and fit for use for the purposes intended; and in compliance with the requirements of this Agreement, Company's Quality and Food Safety Requirements, good manufacturing practices, and any applicable federal, state and local laws including those that govern the manufacture, composition, adulteration, packaging, labelling, sale and security of foods or foodstuffs including but not limited to Food Safety and Standards Act, 2006, Legal Metrology Act, 2009, Factories Act, 1948.
- 6.12 In the event of an inquiry or an inspection of the Plant by a representative of any regulatory agency, Manufacturer shall immediately notify Company if the inquiry or inspection concerns or involve the co-manufacturing activity with respect to the Products or ingredients or Packaging Materials to be used therein. Manufacturer shall also provide to Company any and all reports issued by or correspondence received from any regulatory agency that conducts any such inspection during the period beginning thirty (30) days before the Effective Date and ending upon the termination or expiration of the Term of this Agreement.
- 6.13 Manufacturer will maintain complete and accurate records relating to ingredients, Packaging Materials, co-manufacturing activity and Products. Manufacturer will maintain such records in files that pertain solely to Manufacturer's providing the co-manufacturing activity and that do not contain any documents or information relating to Manufacturer's other business. Manufacturer will make all such files available and readily accessible to Company for inspection upon reasonable notice and during regular business hours. Manufacturer will retain said records for such periods as required by law, but in any event, throughout the Term of this Agreement and for [two (2)] years after its termination or the expiration of its Term. Manufacturer shall also maintain record retrieval systems to comply with Company's requirement that Manufacturer be able to trace, within sixteen (16) hours of a request, the use and disposition of all ingredients, Packaging Materials, and finished Products.
- 6.14 Manufacturer shall ensure suitable workwear and footwear standards/compliances for all the food handlers at the Plant(s), including but not limited to (i) clean outer garment or uniform with no visible dust/dirt on it; (ii) no loose threads of cloth fibers on the uniform or garment; (iii) no pocket above the waist; (iv) no garment or uniform with plastic buttons (metal buttons may be allowed); (v) suitable footwear covering the full foot and ensuring that the foot is not exposed; (vi) no slippers shall be permitted in the manufacturing section of the Plant(s) etc. In case of failure to comply with the above requirements, Manufacturer shall take actions to correct the same. However, subsequent failure to meet/comply with suitable workwear and footwear standard/compliance can result in consequences as specified in Clause 18.1(d).
- 6.15 Company may, at its absolute discretion, appoint additional contract-packers [either within or outside of India] to meet its requirements in regards to the manufacture of the Products.
- Manufacturer warrants that water used for manufacturing process that includes but shall not limited to Potato Washing, Line cleaning during Boil Out or during allergen cleaning etc., shall confirm to IS 10500:2012 i.e. Standards for Potable Water. It is Manufacturer responsibility to provide Potable water all the time which will be cross verified through periodic checks from the NABL, FSSAI and Company centrally approved lab. In case of failure to comply with Potable Water standard IS 10500:2012, Manufacturer will take actions to correct Water treatment plant or set up new water treatment plant to comply with Potable Water standard. However, subsequent failure to meet/comply with Potable Water Standards can result in consequences as specified in clause 18 (1) (g).

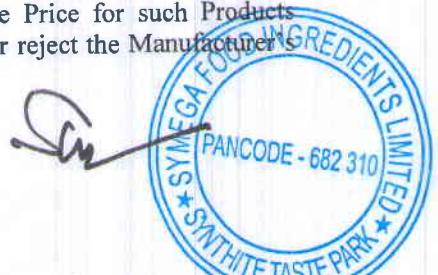
7. PURCHASE PRICE, TERMS OF PAYMENT & WASTE



- 7.1 Manufacturer will charge Company such purchase price as may be mutually agreed from time to time in writing ("Purchase Price"). At the time of execution of this Agreement and till amended by mutual agreement by the Parties hereto the Purchase Price shall be as per **Annexure G**. The Manufacturer agrees to provide transparent details as to costing and calculation of the Purchase Price, as a minimum requirement the Manufacturer must provide such details in accordance with the standard costing model as detailed in **Annexure G** and any such other details as the Company may require.
- 7.2 Manufacturer will communicate in writing to the Company for actualisation of the Purchase price as mutual agreed in **Annexure G** on increase of total direct Material costs quarterly. If the Parties disagree as to how to adjust the Purchase Price for the Products pursuant to the provisions specifically set forth herein with respect to Purchase Price adjustments, the Company may inspect the Manufacturer's Books (defined below) to determine whether an adjustment should be made to the proposed Purchase Price. If, after Company's review of Manufacturer's Books and good faith negotiation, the Parties are unable to agree upon how to adjust the Purchase Price (if at all), Company may choose an independent certified public accountant to audit Manufacturer's Books on a confidential basis to determine if any adjustments should be made. The independent auditor's determination will be final with regard to the amount of any adjustment to the Purchase Price. The Party whose original position was incorrect will pay the cost of the audit. However, if neither Party's original position was correct, the Party whose original position was most incorrect will pay the cost of the audit. If the Parties are equally incorrect, the Parties will share the cost of the audit.
- 7.3 The Company shall recommend classification of the Products and rate of tax, under various statutes. However, in case there is any difference of opinion in the classification of the Products and rate of tax, the manufacturer shall align the Company before making any dispatches of the Products.
- 7.4 The Company shall reimburse all the taxes on the transactions including but not limited to excise, sales tax (central and state), Goods and Service Tax (GST) etc. as applicable to the Products supplied by Manufacturer, subject to mutual agreement as mentioned in 7.3.
- 7.5 The Parties shall review the Purchase Price and make such adjustments and/or amendments, as may be agreed to, and as may be found necessary in accordance with the conditions stipulated in **Annexure G**. Until such time the parties agree to a revised Purchase Price, Manufacturer shall supply the Products at the aforesaid Purchase Price.
- 7.6 Manufacturer shall raise an invoice to the Company on a monthly basis in respect of Products produced and Company shall pay Manufacturer within 15 (Fifteen) days of the receipt of the undisputed invoice.
- 7.7 All payments under this Agreement shall be paid to Manufacturer by Company subject to deduction of tax at source, as applicable.

7.8 Cost reduction Initiatives

The Manufacturer will use its best endeavours to use alternative technologies and methods, this shall include, but not be limited to PepsiCo productivity tools such as the Manufacturing Performance Track and Trend tool, the Lean-Six Sigma tool, in order to identify productivity opportunities and undertake cost reduction initiatives to reduce the cost of Products to the Company (including amendments to the Specifications if at any time the Manufacturer considers that such amendments would result in improved Product or a lower Purchase Price of any Products) (each a "Cost Reduction Initiative"). The Manufacturer agrees to reduce all costs (out of pocket, toll, internal or otherwise) related to the Products by at least 2% each year of the Term. The Manufacturer will pass 100% of such costs savings through to the Company in the Purchase Price for such Products (**Annexure G** will be amended accordingly).The Company may accept or reject the Manufacturer



Cost Reduction Initiative in its absolute discretion by giving notice in writing to the Manufacturer. If the Company accepts the Cost Reduction Initiative, the Purchase Price and, if appropriate, the **Specifications, of the relevant Product will be varied in accordance with the Cost Reduction Initiative** or as otherwise agreed in writing by the Parties. For the avoidance of doubt, the Manufacturer will not be liable to the Company to the extent that any reduction in the Purchase Price pursuant to an agreed Cost Reduction Initiative is unable to be achieved as a result of the Company's failure to implement its obligations under the relevant Cost Reduction Initiative.

7.9 Most Favoured Nations Pricing

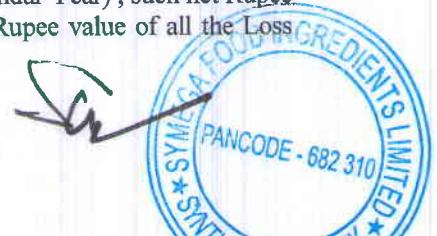
If at any time during the Term of this Agreement, the Manufacturer offers or sells better terms, costs, charges, intangible benefits and/or services/products of like quantity or quality for sale, use or resale or offers any service to another entity not covered by this Agreement, at a lower price, or on more favourable terms and conditions than provided for in this Agreement, including any rebates, bonuses, discounts, free goods or other allowances, the Manufacturer will offer the lower price or more favourable terms and conditions to Company for the period of time that the lower price or more favourable terms and conditions are in effect, or at Company's option, for a similar quantity of the products or services. In the event the Manufacturer does so offer to sell or so sells, Manufacturer will immediately advise Company of that activity.

7.10 Meet Competition

If, at any time during the Term of this Agreement, Company receives an offer from a third party manufacturer to purchase products/services of like similar specifications, grade or quality to the Products in the same country at a lower price, or on more favourable terms and conditions than provided for in this Agreement, including any rebates, bonuses, discounts, free goods, or other allowances, Company will provide the Manufacturer with written notice to match such lower price and/or more favourable terms of such superior offer. The Manufacturer shall have thirty (30) days after receipt to match such superior offer; and, if the Manufacturer does not match such superior offer, Company may purchase such products/services from such third party manufacturer without breaching this Agreement and with the quantity of products/services required to be purchased by Company hereunder being reduced accordingly.

7.11 Waste

- (a) In engaging in the co-manufacturing activity, the Manufacturer shall not waste ingredients and Packaging Materials to any greater extent than the percentages set forth in Annexure E (the "Loss Allowances").
- (b) At the end of each month, the Manufacturer shall provide Company with a report detailing the Manufacturer's usage of all Materials. In addition the Manufacturer shall also provide the Company with data from tools including but not limited to the Manufacturing and Performance Track and Trend tool (as referred to in clause 7.8 above) in accordance with Company instructions, when requested to do so.
- (c) Company shall evaluate the Manufacturer's Material usage and waste on a periodic basis. Company shall do so by comparing, for each category of Materials, the total actual usage during the relevant period to the total quantity actually included in saleable finished Product manufactured during that period (the latter being determined by reference to Company's standard ingredient conversion weights for each package size, as applicable). Company shall determine the amount by which the Manufacturer's waste of each category of Materials either exceeds or is less than the value of the corresponding Loss Allowance. Company shall then determine the net Rupee amount resulting from the sum of such Rupee amounts for all the categories (i.e. Company shall determine the net of all the Rupee amounts reflecting that the waste in the various categories is above or below the Rupee value of the corresponding Loss Allowances). If on a quarterly basis (as per the Calendar Year), such net Rupee amount indicates that the Manufacturer's overall waste exceeds the total Rupee value of all the Loss Allowances, Company shall issue a written notice to the Manufacturer specifying the amount of waste exceeded and the steps to be taken to reduce the waste.



Allowances for the quarter , Company shall invoice the Manufacturer such net rupee amount. For excess waste invoices that are more than 30 days past due, Company shall have the right to offset the amounts owed by the Manufacturer pursuant to such invoices against amounts owed by Company to the Manufacturer pursuant to invoices for manufacturing fees. Material costs used shall be revised as necessary to reflect actual costs.

- (d) The Manufacturer must maintain a log reflecting the lot numbers, manufacturing dates, and expiration dates of all ingredients and must inform Company immediately of all ingredients having less than two (2) months shelf-life remaining. If, as a result of the Manufacturer's failure to use ingredients on a first-in, first-out basis, any ingredient ages past the date after which Company Information indicates that such ingredient is no longer usable, the Manufacturer shall reimburse or credit Company for the cost of such ingredient. In any such case, the Manufacturer shall not enjoy the benefit of the Loss Allowances.
- (e) The waste factors specified in Annexure E shall be jointly reviewed by the parties on a yearly basis and subsequent contract years may be adjusted by mutual agreement of the parties, consistent with good manufacturing procedures.
- 7.12 If Company determines, in its sole discretion, that it is necessary to undertake a stock recovery, market withdrawal, or recall of any Product, the Manufacturer shall assist by carrying out such actions as Company may direct, including, but not limited to, immediately conducting a physical inventory of all affected Products and providing Company with complete records of all shipments of the affected Products. When such stock recovery, market withdrawal, or recall results from any act or omission by the Manufacturer (and not from any defect or deficiency of Materials supplied by Company that is not attributable to the Manufacturer), the Manufacturer shall pay all costs and expenses associated with withdrawing, recalling, recovering, reprocessing, repackaging, or destroying any affected Products. If Company determines, in its sole discretion, that the affected Products must be destroyed, the Manufacturer shall pay all costs of disposal, shall provide Company with proof of destruction by an appropriately licensed disposal company, and shall reimburse or credit Company for all fees for services relating to all affected Products and for the cost of all Materials used in making the affected Products. In any such case, the Manufacturer shall not enjoy the benefit of the Loss Allowances.

8. CONFIDENTIAL INFORMATION

- 8.1 During the Term, each Party will be exposed to the proprietary information of the other Party and its Affiliates, which information may relate to the Products and to the operation of each other's business and the businesses of its Affiliates ("Confidential Information"). Such Confidential Information may include technical information and data relating to packaging, research, operations, development, production, control, sale and marketing of foods including, but not limited to, economic information, business plans, marketing strategy, data, technical information, know-how, process and product information, environmental concerns, methods of manufacture, formulas, recipes and processes for the Products, and additionally and specifically for Company, certain Materials, such as Product seasonings and packaging film compositions. Each Party agrees to hold in confidence and not to disclose to others (except for its attorneys, accountants and Affiliates) without the other Party's prior written consent, the terms of this Agreement and all Confidential Information which has been or will be disclosed to it either directly or indirectly and to limit its use of Confidential Information solely in connection with its performance under this Agreement. In addition, the Manufacturer will not disclose, use, attempt to evaluate or reverse engineer any of Company's Confidential Information in any way, except for the benefit of Company and as expressly authorized herein. The Parties acknowledge that the foregoing obligations of confidentiality and non-use do not apply to any Confidential Information that (1) was in possession of the non-owning Party at the time of disclosure and was not acquired directly or indirectly from the other Party, or (2) was in the public domain at the time of disclosure, or (3) becomes part of the public domain after disclosure through no fault of the non-owning Party, or (4) is obtained by the



non-owning Party after the disclosure from a third party who is lawfully in possession of the Confidential Information and is not subject to an obligation to treat the Confidential Information as confidential.

- 8.2 All Confidential Information is and shall remain the property of the Party owning it to begin with. Worksheets, work product and other tangibles made or received by the non-owning Party that are based in whole or in part on Confidential Information will be the sole property of the owning Party and subject to the aforementioned obligations of confidentiality and non-use. Upon the termination of this Agreement for any reason, or upon written demand, each Party will deliver to the other Party all tangible forms of Confidential Information that belongs to the other Party.
- 8.3 In addition to the foregoing obligations of confidentiality, Manufacturer shall not use Company's name, Trademarks or trade dress in any sales or advertising material without Company's prior written consent.
- 8.4 The Manufacturer, including all its officers, stockholders, employees, agents and representatives, shall take all reasonable and necessary steps, including, but not limited to, entering into written confidentiality agreements previously approved in writing by Company, to protect against the unauthorized use or disclosure of the Confidential Information disclosed by Company, by any third party including its employees, attorneys, accountants, and agents and its subsidiaries and parent companies and others in privity of association with it and the Manufacturer shall be responsible for such third parties' compliance with the foregoing obligations.
- 8.5 The Parties acknowledge that the obligations of confidentiality and non-use set forth in this clause 8, shall survive the termination of this Agreement and shall be in addition to and shall not replace any secrecy or non-disclosure agreement heretofore executed between the Parties.

9. PROTECTION OF INTELLECTUAL PROPERTY

- 9.1 Manufacturer hereby acknowledges and confirms that the Trademarks and designs and all rights and interests attached thereto shall at all times vest with Company.
- 9.2 It is specifically agreed that by virtue of using Materials and/or Trademarks, in respect of Products produced or supplied by Manufacturer under this Agreement, no benefit or rights shall accrue to Manufacturer and Manufacturer shall not claim or enjoy any rights whatsoever in the said Trademarks. Manufacturer recognizes and acknowledges that such Trademarks are proprietary to Company and its PepsiCo Related Entities and shall continue to be so.
- 9.3 Manufacturer shall not infringe, copy, imitate or otherwise interfere with the brand names, trade or merchandise marks or devices or designs or copyright belonging to or licensed to Company or otherwise alter, deface or interface with the same or pass off other goods or describe other goods as the same as the Products, or otherwise prejudice, alter or affect the copyright, trade or merchandise mark or certified packaging or design or colour of the Package Design or Specifications or the price or weight or other codification that is marked on the packaging or packing materials or cartons that may be given or caused to be given to Manufacturer by Company.
- 9.4 The Manufacturer will ensure that all Materials including the rejected final Product and the rejected/waste Packaging Materials bearing the Trademarks of the Company will be disposed of in the manner as provided by the Company from time to time.
- 9.5 The Manufacturer will comply with any trademark use guidelines promulgated by Company, including printing correct Trademark notices on the packaging. In addition, Manufacturer will print any notice or information required by Company or by any applicable law or regulation, including labeling laws and regulations.



9.6 Manufacturer acknowledges and agrees that all packages, package designs, products, product designs, product formulas, seasoning formulations, data, recipes, specifications, textures, flavours, manufacturing processes, methods, equipment, improvements, programs, ideas, discoveries, works of authorship, know-how, and technology developed, conceived, created, prepared or provided by Company or its Affiliates, including all related trade secrets, patent applications, patents, copyrights, trademarks, trade names, brands, brand names, trade dress and other intellectual property rights, whether or not patented or patentable, owned by Company and/or its Affiliates as of the Effective Date ("Company Intellectual Property") are and will remain the exclusive property of Company or its Affiliates. During the Term, Manufacturer is granted a limited, non-exclusive, license (without the right to sublicense) to Company Intellectual Property for the sole purpose of making, having made, using, selling, and offering to sell Products for or to Company. Manufacturer shall not manufacture, supply, or process directly or indirectly for any entity other than Company any products using, including, incorporating, or in any part derived from, any Company Intellectual Property. Manufacturer further acknowledges that Company and its Affiliates have made substantial investments in Company Intellectual Property and that Company Intellectual Property has acquired substantial goodwill throughout the world. All use of Company Intellectual Property by Manufacturer will inure strictly and solely to the benefit of Company and its Affiliates. Except as provided in this clause 9.6, Manufacturer has not acquired and will not acquire by this Agreement or otherwise, any right, title, interest or license in or to Company Intellectual Property.

10. TITLE

10.1 **Title to Products:** (Subject to clause 10.2) Each delivery of finished Product (including Raw Materials and Packaging Materials contained therein) shall be deemed to be sold and delivered to Company and title and risk of loss or damage to the Products (including the Raw Materials and the Packaging Materials contained therein) shall pass from the Manufacturer to Company upon delivery to the Company plant or location specified by Company in the delivery schedule.

10.4 Title to all ingredients, Raw Materials and Packaging Materials supplied by Company, all work in process, and all finished Products shall be held by Company. The Manufacturer shall not by any act or omission lead any person or entity to believe that the Manufacturer holds title to any ingredients, Raw Materials, Packaging Materials, work in process, or finished Products as to which Company holds title.

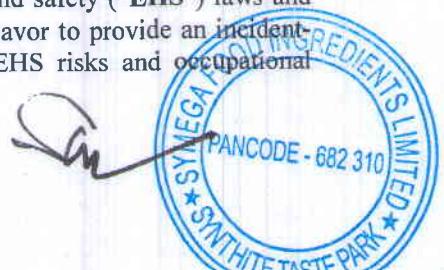
11. COMPLIANCE WITH LAWS AND REGULATIONS

11.1 It will be the responsibility of Manufacturer to take all steps as may be required under the laws of India including but not limited to Food Safety and Standards Act, 2006, Legal Metrology Act, 2009, Factories Act, 1948, or other regulations as applicable in respect of Products produced and supplied by Manufacturer to Company from its Plant in accordance with the terms of this Agreement.

11.2 Without prejudice to the generality of the foregoing, the Parties shall at all times comply with all applicable laws, rules, and regulations in force relating to or appertaining to the due and proper performance of their duties and obligations under this Agreement. The Manufacturer further agrees to comply with the PepsiCo Global Food Safety Policy, which includes the requirement to have annual approval of each manufacturing site, at the Manufacturer's cost, by means of a Global Food Safety Initiative audit (GFSI recognised audit scheme) and a PepsiCo material specific questionnaire.

11.3 COMPLIANCE WITH ENVIRONMENTAL, HEALTH AND SAFETY LAWS

Manufacturer shall comply with all applicable environmental, health and safety ("EHS") laws and regulations. Manufacturer shall proactively manage EHS risks to endeavor to provide an incident-free manufacturing operation where harm to the environment, and EHS risks and occupational



injuries and illnesses are prevented. Manufacturer shall implement management systems and controls that identify EHS hazards and assess and control EHS risks related to their specific operations. At a minimum, Manufacturer shall maintain certification of its management systems to the FSSC 22000, ISO 22000 and OHSAS 18001 standards, and annually provide evidence of such certification to the Company. Alternatively, Manufacturer may, with the Company's written approval, maintain EHS management systems which are equivalent to those set forth in the internationally recognized EHS management standards, FSSC 22000, ISO 22000 and OHSAS 18001. Where an EHS alternative management system is used, Manufacturer shall obtain an EHS management systems and regulatory compliance audit from a qualified third party auditor at least once every three years, and shall provide a copy of the audit report to the Company or a summary statement from the third-party auditor confirming that its management systems are equivalent to, FSSC, ISO and OHSAS standards and that the operation is in compliance with applicable EHS laws and regulations. Manufacturer shall also provide potable drinking water (conforming, at a minimum, to World Health Organization guidelines for drinking water) and adequate restrooms; fire exits and essential fire safety equipment; emergency aid kits and access to emergency response including environmental, fire and medical. Manufacturer shall conduct its manufacturing operations with care for the environment. The potential environmental impacts of daily business activities shall be considered in Manufacturer's decision-making processes, as well as opportunities for conservation of natural resources, recycling, source reduction and pollution control to ensure cleaner air and water and to reduce landfill wastes.

12. INDEMNIFICATION

- 12.1 The Manufacturer agrees to indemnify, defend, and hold harmless Company, its parents, subsidiaries, and Affiliates, and their directors, officers, employees, and agents, from and against any and all claims, actions, damages, liabilities, judgments, awards, losses, costs, and expenses (including court costs, reasonable attorneys' fees, experts' fees, costs of investigation, penalties, interest and amounts paid in settlements) arising from or in any way related to:
- (a) claims by the Manufacturer's employees arising from the production or handling of the Products; or
 - (b) a breach by the Manufacturer, whether by commission or omission, of any of its obligations, representations, or warranties under this Agreement; or
 - (c) Claim by any third party including government agency, reason of which is directly attributable to Manufacturer's obligations, warranties and representations under this Agreement.
 - (d) the negligence or misconduct of the Manufacturer or any of its agents, contractors, servants or employees but excepting any such Claim caused solely by the negligence or fault of Company; or
 - (e) any damage to property or any injury (including death) to any person resulting from the Manufacturers provision of the services under this Agreement.
- 12.2 Company agrees to indemnify, defend, and hold harmless the Manufacturer, its parents, subsidiaries, and Affiliates, and their directors, officers, employees, and agents, from and against any and all claims, actions, damages, liabilities, judgments, awards, losses, costs, and expenses, including reasonable attorneys' fees and experts' fees, arising solely from the Manufacturer's adherence to Company's Information.
- 12.3 Company agrees to indemnify, defend, and hold harmless Manufacturer, its parents, subsidiaries, and Affiliates, and their directors, officers, employees, and agents, from and against any and all claims, actions, damages, liabilities, judgments, awards, losses, costs, and expenses (including court costs, reasonable attorneys' fees, experts' fees, costs of investigation, penalties, interest and amounts paid in settlements) arising from or in any way related to the proven negligence or misconduct or violation of the Company or any of its agents, contractors, servants or employees.



13. INSURANCE

- 13.1 The Manufacturer shall obtain and maintain throughout the term of this Agreement, commercial general liability insurance (including product liability, fire, any damage to the Product or the Materials howsoever caused) for India from an insurer (or insurers) acceptable to Company in a commercially reasonable amount. The Manufacturer agrees to furnish a certificate of insurance providing such coverage within thirty (30) days after the Effective Date of this Agreement. Nothing in this section shall be deemed to limit in any way the indemnification provisions of clause 12 above.
- 13.2 Manufacturer shall, and ensure that its subcontractors obtain and keep in force during the Term, at their sole cost and expense, the insurance coverage as prescribed by law and in accordance with clause 13.1 of this Agreement, within fifteen (15) days of executing and for the Term of this Agreement, for all coverage required by law.

14. REPRESENTATION AND WARRANTIES – MANUFACTURER

Manufacturer represents and warrants to Company as follows:

(a) Authority

Manufacturer is a registered Company validly existing and in good standing under the laws of India and has all requisite power and authority to own and operate the Plant and to carry on its business as now conducted. The individual executing this Agreement on behalf of the Manufacturer represents and warrants that he or she has the full and complete authority to do so, making this Agreement valid and enforceable against Manufacturer in accordance with its terms.

(b) Consents and Approvals: No Violation

Except as otherwise set forth in this Agreement, there is no material requirement applicable to Manufacturer to make any filing with or to obtain any clearance as a condition precedent to the lawful consummation by Manufacturer of the transactions contemplated hereby. Neither the execution, delivery or performance of this Agreement by Manufacturer nor consummation by Manufacturer of the transactions contemplated hereto will (i) violate the terms and conditions of the Partnership deed/memorandum etc. of Manufacturer; (ii) result in a default (or give rise to any right of termination, cancellation or require any consent of any third party) under any of the provisions of any contract, agreement, legal proceeding or other instrument whatsoever binding on Manufacturer or any of its properties or assets; or (iii) assuming compliance with the matters set forth in this Agreement violate any order, judgment, decree, statute, rule or regulation applicable on the date hereof to Manufacturer or any of its properties or assets.

(c) Litigation

Manufacturer has represented that neither the Manufacturer nor any of its shareholder's/Directors/stakeholders have any pending litigation in any Court of law or any quasi-judicial, governmental Authority effecting the execution, performance and implementation of this Agreement. Manufacturer shall also ensure to keep Company duly informed regarding any litigation filed by it in any court of law or any quasi-judicial, governmental Authority effecting the execution, performance and implementation of this Agreement. A declaration in this context is annexed herewith as **Annexure L**.

(d) Legal Compliance



Manufacturer represents and undertakes that it has and shall keep in place to the satisfaction of Company all certificates, licenses and consents that are necessary to be in compliance with the applicable laws to the ownership and running of the manufacturing facility to be in a position to consummate the transaction contemplated hereby.

(e) **Time is of the essence in this Agreement.** Any time limits set for production and export of the Products under this Agreement shall be of the essence.

(f) **Books of accounts**

During the Term and for 8(eight) years thereafter, Manufacturer will maintain complete and accurate books and records of its actual costs to produce and package the Products ("Manufacturer's Books"), and upon prior notice, Company may inspect and make copies of Manufacturers Books. The information in Manufacturer's Books will be subject to the confidentiality provisions of this Agreement.

(g) **Manufacturing Records**

Manufacturer will maintain complete and accurate manufacturing, processing, packaging, inspection, and quality control records ("Manufacturing Records") that (1) show the complete history of each grouping of Products, including lot numbers and production dates; (2) facilitate easy identification and tracing of each lot, batch, unit production run and any other applicable grouping; and (3) include any other information reasonably requested by the Company, Manufacturer will make the Manufacturing Records and any other reports, evaluations, or other documents relating to the manufacture, storage and packaging of the Products and Materials available for inspection and copying at all times by the Company or its authorized agents at Manufacturer's Facilities and, at Company's request, Manufacturer will deliver to Company a copy of all or any part of the records.

(h) The Manufacturer shall promptly notify Company of any actual or potential material adverse change in the Manufacturer's financial condition.

(i) The Manufacturer shall promptly notify Company if any person or entity files, records, or asserts a lien, security interest, or other encumbrance against the Equipment or any part thereof, any ingredients or Materials, any work in process, or any Product.

(j) The Manufacturer represents that all Products as to which the Manufacturer has rendered services are warranted, as of the date on which the Manufacturer ships, delivers, or releases them for shipment:

1. to conform to all the requirements set forth this Agreement entitled "**Standards of Performance**" as set forth in this Agreement and/or as and when specifically communicated;
2. to be merchantable, fit for the purpose for which they are intended, fit for human consumption, and free of any liens, encumbrances, security interests, or other third-party claims; and
3. not adulterated or misbranded under the provisions of any applicable federal, state, or local law or regulation.

(k) If the Manufacturer receives any notice from any governmental agency or other third party that may affect the parties' rights and obligations under this Agreement, the Manufacturer shall immediately give Company notice thereof and shall keep Company apprised at all times of the status and development of all matters relating thereto.



- (l) The Manufacturer and the Company shall not solicit each other's employees for the Term of this Agreement and for period of two (2) years thereafter.
- (m) The Manufacturer shall comply with all applicable laws, rules and regulations relating to or affecting the performance of the co-packing activity.
- (n) The Manufacturer warrants that none of the Manufacturer's employees, officers, Affiliates, partners, or agents, or anyone having an ownership interest in the Manufacturer, is an official or employee of the government, an official or a political Party or a candidate for political office.
- (o) The Manufacturer will use best endeavors to promote and protect the interests of Company or any of its Affiliates during the Term of this Agreement;

(p) Quality Requirements

- i. The Manufacturer will maintain American Institute of Baking ("AIB") certification and be AIB audited as part of PepsiCo Global Quality Requirements. In case Manufacturer fails the AIB audit with Unsatisfactory Condition or the Food Safety Audit such as FSSC 22000 or any such quality related audit with critical/major NCs for which the Company has borne the expense, the Manufacturer shall get re-audited in the same calendar year, or at the earliest date possible, provided that the Company is informed in writing of such failure to be re-audited within the same calendar year along with the earliest date of re-audit. The expense of such subsequent audit shall be borne by the Manufacturer.
- ii. The Manufacturer agrees to comply with the Company guidelines given in Quality and Analytical System Health Audit check sheet ("QASHA") for which the Company shall conduct an annual audit. In case the Manufacturer fails in the critical questions termed as "Killer Questions" in the audit check sheet, the Manufacturer shall take corrective and preventive action within 30 (thirty) days of the audit report.
- iii. The Manufacturer acknowledges that its failure to strictly comply with the corrective and preventive actions within 30 (thirty) days of the audit report will constitute a material breach of the Agreement, enabling the Company to immediately terminate the Agreement.
- iv. The Manufacturer will comply with the following PepsiCo Codes of Practice:
 - I. Hazard analysis and critical control point;
 - II. Integrated Pest Management;
 - III. Allergen management; and
 - IV. Environmental monitoring program for low moisture foods.

15. REPRESENTATIONS AND WARRANTIES – COMPANY

(a) Authority

Company is a company duly organized, validly existing and in good standing under the laws of India and has all requisite corporate power and authority to carry on its business as now conducted. Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Company and constitutes valid and binding obligations of the Company enforceable against Company in accordance with its terms.

(b) Consent and Approvals

Neither the execution nor the delivery of this Agreement nor any other agreement contemplated hereby or thereby, will:



violate any statute, regulation, rule, order, decree, injunction or other restriction of Governmental entity or court to which Company is subject to; or conflict with or result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any contract, agreement or other instrument binding on Company.

16. FORCE MAJEURE

- 16.1 The failure or delay of any Party to perform any obligations under this Agreement solely by reason of act of God, acts of Government (except as otherwise enumerated herein), orders or directions of Courts of Law, riots, wars, strikes, lockouts, accidents in transportation or other causes beyond its control (collectively referred to as the "**Force Majeure**") shall not be deemed to be a breach of this Agreement, provided, that the Party so prevented from performance of its obligations herein, shall not have caused such Force Majeure. The Party so prevented shall have used reasonable diligence to avoid such Force Majeure or ameliorate its effects, and shall continue to take all actions within its power to comply as fully as possible with the terms and conditions of this Agreement.
- 16.2 Except where the nature of the event shall prevent it from doing so, the Party suffering such Force Majeure shall notify the other Party in writing within seven (7) days after the occurrence of such Force Majeure and shall in every instance, to the extent reasonable and lawful under the circumstances, use its best efforts to remove or remedy such cause with all reasonable dispatch.
- 16.3 If the event of Force Majeure persists for a consecutive period of more than three (3) months, then the other Party shall have the option to terminate the Agreement without incurring any liability.
- 16.4 Notwithstanding anything contained in this Agreement, if failure in fulfilments of any obligations under this Agreement by Company and/ or Manufacturer is attributable to Force Majeure then neither Party shall be liable to pay any compensation whatsoever for the notified Force Majeure period.

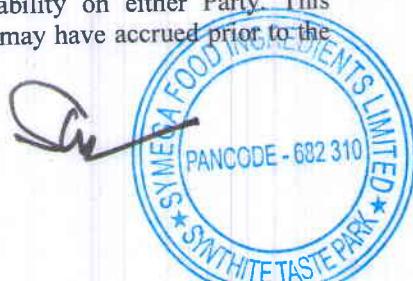
17. TERM

This Agreement shall come into force from the Effective Date and shall remain effective for the Term unless determined earlier. This Agreement may be renewed in writing with the mutual consent of both Parties.

18. TERMINATION

- 18.1 Company shall have the right to terminate this Agreement:
- (a) Upon 6 months' notice if Company determines, for any reason including but not restricted to any change in government policy, regulation and/or the law, to discontinue the sale or distribution of the Products.
- (b) Forthwith if there is (i) a sale or other disposition of the Plant or (ii) a cessation of manufacturing activity at the Plant and (iii) in case of Manufacturer entering into a similar arrangement with a Competitor without the written approval of Company.
- (c) Company shall have the right to terminate this Agreement at any time due to market conditions, or if it chooses according to its sole discretion to stop the sale of the Products, or if it chooses to manufacture the Product itself or for any other reason whatsoever, provided that it notifies the Manufacturer of its intention to terminate at least 6 months prior to the desired termination date.

In this case, this Agreement shall be terminated without any liability on either Party. This termination will not prejudice any rights of either Party which rights may have accrued prior to the effective date of termination.



- (d) In case of detection of three consecutive cases of a material breach of quality and/or food safety (including Product rejections by Company and/or detection of unsatisfactory findings upon Company's audits to Manufacturer premises), provided that a written notification is sent from Company to Manufacturer for each such detection upon its happening.

In this case, Company shall have the right to terminate this Agreement immediately by serving notice of termination to Manufacturer without any liability whatsoever on Company.

- (e) Forthwith if the Manufacturer has released, shipped, sold, or otherwise transferred any Products to any person or entity whatsoever other than those to whom release or shipment has been specifically authorized by Company;
- (f) Forthwith if the Manufacturer is unable or has failed after thirty (30) days written notice to obtain or renew any permit, license, or other governmental approval necessary to carry on the activities contemplated by this Agreement;
- (g) Forthwith if the Manufacturer fails to perform any Order of Company due to any reason other than Force Majeure, Company shall be entitled to terminate this Agreement and the Manufacturer shall be liable to pay liquidated damages equal to 20 % percent of the Total Value of the unperformed Order to the Company.

18.2 Either Party may forthwith terminate this Agreement if:

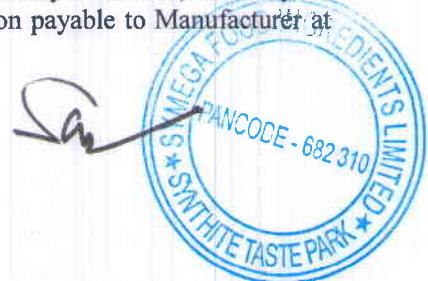
- (a) The other Party is in breach of any of its representations and warranties or any of its obligations hereunder and in the event of a breach capable of remedy, it fails to cure such breach within thirty (30) days or such other mutually extended date of receipt of written notice from the Party not in breach.
- (b) The other Party enters into bankruptcy (except amalgamation or capital reconstruction), liquidation or in the event that its business or assets are confiscated or seized as a result of foreign interference or a winding up petition is admitted or if the other Party makes any assignment for benefit of its creditors.
- (c) If any temporary or permanent injunction or judgment is entered against either Party in connection with any alleged infringement of a patent or other intellectual property right related to Products, provided however, if following any such injunction or judgment the Party to which such infringement or judgment applies ceases to use or require the use of the patent or other intellectual property right in question in producing Product, then the entry of such injunction or judgment shall not be an event of default hereunder.
- (d) The other Party is prevented substantially from performing its obligations under this Agreement by virtue of any change in law, governmental regulations, orders or judicial decrees enacted or promulgated by any branch of federal, state or local government or agency thereof.
- (e) If it is legally impossible to obtain foreign currency in order to pay for the imports of Raw Materials and supplies essential for the production of the Products.

- 18.3 Notwithstanding anything contained in clause 18.2 (a) and anything contrary or otherwise contained elsewhere in this Agreement, Manufacturer acknowledges that its failure to strictly comply with the Supplier Code of Conduct and Anti-Bribery Policy Compliance as contemplated in clause 21 of this Agreement will constitute a material breach of the Agreement, enabling Company to immediately terminate the Agreement.

19. CONSEQUENCES OF TERMINATION



- 19.1 Upon termination of the Agreement, Manufacturer shall forthwith hand over to any representative or authorised agent or nominee of Company:
- (a) All stocks of the Products manufactured by Manufacturer pursuant to and in terms of this Agreement;
 - (b) All assets belonging to Company;
 - (c) All unutilized and in process Materials in connection with the Products after receiving all payments for the same from Company;
 - (d) All documents pertaining to Materials in connection with the Products or orders placed or Materials in transit, in accordance with this Agreement, including any technical information and data;
 - (e) All material bearing Company's Trademarks on it; and
 - (f) All Confidential Information.
- 19.3 Company shall pay Manufacturer the Purchase Price due and payable for the stocks of Products produced in the term of this Agreement up to the date of termination. In such circumstances where the Products and/or Materials are not owned by the Company at the date of termination the Company shall further pay for all Materials and/or Products that it desires to take from the Manufacturer and agrees to make payments for all non-cancellable orders placed by Manufacturer for Materials.
- 19.4 The Manufacturer shall not use any Trademarks, nor hold itself out or identify itself as a manufacturer for the Company from the termination date. The Manufacturer also undertakes and warrants that it will not use in connection with any Product any trade mark, designation or trade dress which imitates or could be confused with the Company's Trademark, designation or trade dress.
- 19.5 The termination or expiration of this Agreement shall not affect the respective rights and liabilities of each of the Parties hereto which accrued prior to such expiration or termination.
- 19.6 Upon termination of this Agreement, howsoever occasioned, or on expiry of its Term, Company shall have the first right of refusal to acquire either itself or through any of its nominees machinery of Manufacturer and other movable fixtures related to Products ('Machinery') at their Written Down Value (as defined in Annexure L); or
- 19.7 The Written Down Value shall be determined as per schedule set out in **Annexure I** which may vary on the basis of actual investments made by the Manufacturer on Plant/Facilities comprising plant and machinery of Manufacturer.
- 19.8 The lump sum consideration for the acquisition shall be reduced by any amounts due by Manufacturer to Company or its Affiliates and in case of any additional capital expenditure on Plant and machinery incurred by Manufacturer with the consent of Company after entering into this Agreement, the depreciated value of such additional capital expenditure shall be added to the consideration payable to Manufacturer for its Facilities. The assessment of the depreciation of assets referred above will be carried out at the time of exercise of options by Company.
- 19.9 Manufacturer shall ensure that the Machinery/Plant is free from any liability, statutory or otherwise or encumbrances at the time of transfer thereof. In case there are any liabilities, statutory or otherwise, the same shall be reduced from the lump sum consideration payable to Manufacturer at the time of transfer.



- 19.10 During the subsistence of this Agreement, if Company or any of its affiliates advances a loan to Manufacturer in excess of the Written Down Value of the Plant defined in Clause 19.7 above to meet or pay the liabilities of the Manufacture (whether payable in part or full by Manufacturer), then Company or any of its nominees shall be entitled to acquire the Plant at a price and on terms set out in Clause 19.8 of this Agreement.
- 19.11 The termination or expiration of this Agreement shall not affect the respective rights and liabilities of each of the Parties hereto which accrued prior to such expiration or termination.

20. GENERAL

20.1 Assignment and Change of Control

- (a) This Agreement will be binding upon and will inure to the benefit of each Party and its respective successors and assigns. This Agreement shall be freely assignable by Company to any of its Affiliates. The Manufacturer may not assign, transfer or pledge this Agreement or assign its rights or obligations hereunder without Company's prior written consent. If Company provides its consent, the terms and conditions of this Agreement will be binding upon the assignee to this Agreement unless otherwise agreed upon by Company in writing.
- (b) In case any partner of Manufacturer or any person claiming any interest in the Manufacturer through any partner decides to alienate his share, express written permission of Company has to be sought.
- (c) In addition to the foregoing, before selling or otherwise transferring a controlling interest in Manufacturer's business to any third party during the Term, the Manufacturer will offer to Company an exclusive right of first refusal to acquire Manufacturer's business. If the Company does not acquire such business and consents to the assignment of this Agreement, Manufacturer warrants that any third-party will be obligated to provide the services to Company as required in this Agreement.

20.2 Waiver

The failure of any Party to enforce any term or provision hereof shall not be construed to be a waiver of such term or provision and shall in no way affect the right of such Party thereafter to enforce such term or provision or any other term or provision hereof.

20.3 Cumulative Rights

All remedies under this Agreement whether provided herein or conferred by statute, civil, custom, trade or usage are cumulative and may be enforced successively or concurrently.

20.4 Partial Invalidity

Should any provision(s) of this Agreement be held invalid or unenforceable, such invalidity shall not affect the entire Agreement. This Agreement shall then be construed as if it did not contain the provision(s) held to be invalid, and the Parties shall endeavour, in good faith to replace such invalid provision(s) with a new provision(s) which shall be as nearly as possible similar in its/their legal and commercial effect to the replaced provision.

20.5 Amendments

No modification, amendment or waiver of the terms and conditions of this Agreement shall be valid or binding unless made in writing and duly executed by the Parties.



20.6 Entire Agreement

This Agreement, together with the Annexures, constitutes the entire agreement between the Parties and supersedes and cancels any prior written or oral agreement, representation, understandings, arrangement, communication, commitment or expression of intent relating to the subject-matter of this Agreement.

20.7 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the section headings of this Agreement are for convenience only and do not alter or affect the interpretation of this Agreement;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a natural person includes any company, partnership, joint venture, association, corporation, society or other body corporate; and
- (d) a reference to paragraphs, clauses, recitals and annexures are references to paragraphs, clauses, recitals and annexures of this Agreement.

20.8 Severability

The clauses in this Agreement are severable from one another. In the event that any provisions or any part of any provision of this Agreement is found to be void and/or unenforceable for any reason whatsoever, then such provisions shall be stricken and of no force and effect and shall not affect the entire Agreement. This Agreement shall then be construed as if it did not contain the provision so struck off, and the Parties shall endeavor, in good faith to replace such provision with a new provision which shall be as nearly as possible similar in its/their legal and commercial effect to the original provision.

20.9 Miscellaneous

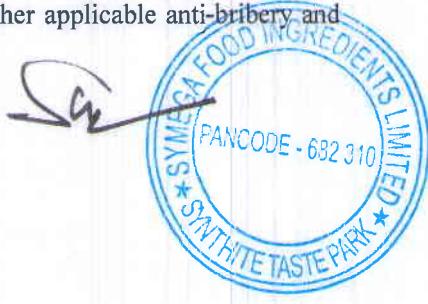
This Agreement is executed in 2 counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

21. SUPPLIER CODE OF CONDUCT AND ANTI-BRIBERY POLICY COMPLIANCE

21.1 This Agreement shall be subject to, and the Manufacturer, its officers, employees, agents, and shall

21.1 This Agreement shall be subject to, and the Manufacturer shall at all times adhere to:

- (i) PepsiCo's Supplier Code of Conduct, which is available at the following website: www.pepsico.com/SupplierCodeofConduct, and which may be amended from time to time by the Company; and
- (ii) PepsiCo's Global Anti-Bribery Compliance Policy (the "Anti-Bribery Policy"), available at the following website: <http://www.pepsico.com/About/Global-Code-Of-Conduct>, and which may be amended from time to time by the Company, the U.S. Foreign Corrupt Practices Act ("FCPA") and any other applicable anti-bribery and anti-corruption laws.



21.2 The Manufacturer represents, warrants and covenants that, to its knowledge, neither the Vendor, nor any of its directors, officers, employees, agents, subcontractors nor any other person or entity acting on its behalf, has in the past five years nor shall it in the future, make any offer, payment, or promise of gifts, money or any other thing of value to either:

- (i) a Government Official (as defined in the Anti-Bribery Policy) or
- (ii) any representative of a third party

for the purpose of improperly influencing any act or decision of such person or a Government Official to act in violation of his/her lawful duty or for the purpose of securing any improper advantage or obtaining or retaining business.

21.3 The Manufacturer represents that no ownership interest in the Manufacturer, direct or indirect, is held or controlled by or for the benefit of a Government Official. The Manufacturer further represents that none of its officers, directors or employees are a Government Official. If there are any changes, the Manufacturer represents, warrants and covenants that it will immediately notify the Company and the Company shall be entitled to immediately terminate this Agreement in full or in part.

21.4 At the start of each year during the term of the Agreement the Manufacturer shall provide to the Company a letter signed by a director of the Manufacturer confirming that:

- (i) The Manufacturer is in full compliance with the provisions of this Clause 21.
- (ii) At the Company's request, the Manufacturer agrees to participate in Company-provided training regarding the PepsiCo Anti-Bribery Policy

21.5 The Manufacturer must notify the Company before hiring subcontractors or other agents to perform any services under this Agreement. The Company shall have the right to conduct anticorruption due diligence on such subcontractors or other agents and may object to the hire, in its sole discretion, based on the findings.

21.6 The Manufacturer shall maintain and preserve accurate financial records (including invoices and supporting documents) in accordance with all applicable law and generally accepted accounting practices for all transactions which the Manufacturer undertakes in the performance of its obligations under or in connection with this Agreement ("Financial Records").

21.7 The Manufacturer shall adopt and maintain appropriate policies, procedures, and controls to ensure its full compliance with the Anti-Bribery Policy and all applicable anti-bribery laws. The Manufacturer represents and warrants that it has communicated to any subcontractors or other agents performing under this Agreement that they should have adequate policies, procedures, and controls in place to ensure that performance under this Agreement is in full compliance with all applicable anti-bribery laws.

21.8 The Company shall have the right to examine the Financial Records together with the Manufacturer's anti-bribery compliance policies, procedures, and controls to evaluate whether the Manufacturer is complying with the Anti-Bribery Policy and the Manufacturer shall fully co-operate with the Company for such purposes and shall enact any reasonable recommendations made by the Company to ensure the Manufacturer's compliance with the Anti-Bribery Policy.

21.9 If the Manufacturer knows of or suspects a breach of the Anti-Bribery Policy or this Clause 21, the Manufacturer shall promptly:

- (i) notify the Company thereof;



- (ii) take all necessary measures to remediate such breach

The Manufacturer shall, to the satisfaction of the Company, promptly conduct a thorough investigation of the suspected breach, and if requested by the Company, share the methodology and findings of such investigation with the Company. The Company may, at its discretion, conduct its own investigation and the Manufacturer shall cooperate fully in any such investigation or any investigation conducted by a statutorily authorized party into such breach.

- 21.10 If the Manufacturer breaches the Anti-Bribery Policy or this Clause 21, the Company may with immediate effect terminate this Agreement and the Manufacturer shall fully indemnify the Company against all losses suffered by the Company as a result thereof.

22. GOVERNING LAW & ARBITRATION

- 22.1 The terms and provisions of this Agreement, including all matters relating to its validity, construction, performance and enforcement, shall be governed by the laws of India without regard to choice or conflict of law rules.
- 22.2 Any dispute or difference between the Parties as to the effect, interpretation or application of this Agreement or as to their rights, duties or liabilities thereunder, or as to any act, matter or thing arising out of, consequent to or in connection with this Agreement (hereinafter referred to as the "Difference") shall be resolved amicably through negotiations. Such negotiations shall commence within a period of 7 (seven) days of the issue of notice by either Party calling for the same (hereinafter referred to as the "Notice").
- 22.3 In the event that such negotiations fail to resolve the Difference within a period of days from the date of receipt of Notice by the other Party, either Party may invoke this arbitration clause under notice to the other. The Difference shall then be referred to and finally resolved by arbitration in accordance with the arbitration in accordance with provisions of Arbitration and Conciliation Act, 1996.
- 22.4 The place of arbitration shall be Gurugram and the language of arbitration shall be English. The arbitral tribunal shall consist of three arbitrators, one appointed by Company, one appointed by Manufacturer and the third appointed by the two serving arbitrators or in accordance with the rules specified above. The arbitral tribunal may grant any relief deemed by the tribunal to be just and equitable, including specific performance. The costs of arbitration shall be borne equally by the respective Parties. The award(s) in such arbitration shall be final and binding upon the Parties and may be used as a basis of judgment thereon in the jurisdiction where the parties are subject to or elsewhere. No Party shall be entitled to commence or maintain any action in a court of law upon any matter in dispute until such matter shall have been submitted and determined as herein before provided and then only for the enforcement of the amount found due or injunctive relief ordered in such arbitration.
- 22.5 Subject to aforementioned sub-clauses of clause 22, the courts at Gurgaon will have exclusive jurisdiction in the event of any dispute between the Parties.



23. NOTICES

23.1 All notices, requests for written approval and other communication provided for in this Agreement shall be submitted in writing and transmitted by registered post, prepaid registered airmail, courier service, or facsimile transmission as follows:

If to Company

Attn: Sandeep Kamath
Address: PepsiCo India Holdings Pvt. Ltd.
Pioneer Square, 3-6th Floor,
Opposite Golf Course Extension Road,
Section 62 Gurgaon-122101

With copy to Chief Legal Counsel

Attn: Mr. Vinod Kaushal,
Address: PepsiCo India Holdings Pvt. Ltd.
Pioneer Square, 3-6th Floor,
Opposite Golf Course Extension Road,
Section 62 Gurgaon-122101

If to Manufacturer

Mr. Mathews Jacob,
Synthite Taste Park, No XI 312G Pancode,
Vadavucode Kerala- 682310

23.2 Such notices or other communications shall be deemed to have been validly given on:

- (i) 5 days after posting if transmitted by mail;
- (ii) The date of receipt, if transmitted by courier; or
- (iii) The date immediately after the date of transmission with confirmed answer back, if transmitted by facsimile transmission, whichever shall first occur.

23.3 Either Party may, from time to time, change its address or representative for receipt of notices or other communications provided for in this Agreement, by giving the other Party, not less than ten (10) days prior written notice in the manner prescribed hereinabove.

24. FURTHER ASSURANCE

Both the parties hereto agree that they shall do all such acts, deeds and things to further and better implement the terms, conditions and stipulations and mutual obligations under this Agreement and faithfully carry out their respective duties/obligations under this Agreement.

25. BUSINESS CONTINUITY PLANNING

As a critical supplier to the Company, the Manufacturer agrees to develop an internal Business Continuity Planning (“BCP”) program with the objective of identifying risks that may affect its ability to supply Products to the Company in accordance with this Agreement and to articulate and execute preventative, mitigation and contingency plans to reduce those risks and associated impacts on its obligations under this Agreement. Upon the Company’s request the Manufacturer will



provide the Company with documentation describing its current BCP program and/or review such program with the Company.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE REPRESENTATIVES THEREUNTO DULY AUTHORISED AS OF THE DATE FIRST WRITTEN ABOVE.

Signature: _____
Name: _____
Position: _____

FOR AND ON BEHALF OF
Company

Signature: _____
Name: SANTOSH STEPHENS
Position: MANAGING DIRECTOR

FOR AND ON BEHALF OF
Manufacturer



ANNEXURE A
PLANT DETAILS & PRODUCT INFORMATION

Plant shall mean Manufacturer's manufacturing facility located at Synthite Taste Park, Building no. XI 312/G, Pancode, Ernakulam- 682310 which shall be used in the manufacture of the following products:

1. Oats Plus
2. Flavoured Oats in different grammages
 - a) Homestyle Masala
 - b) Stawberry Apple
 - c) Kesar with Kishmish
 - d) Tomato Veggie Surprise

(PIH)



(Manufacturer)

ANNEXURE B
RAW MATERIALS

1. QUICK COOKING OAT
2. RICE BRAN OIL
3. DEHYDRATED ONION FLAKE
4. DEHYDRATED CARROT FLAKE
5. DEHYDRATED CORIANDER FLAKES
6. SPICE MIX - TOMATO SOUPY
7. FLAVOUR KESAR
8. DEHYDRATED RAISINS
9. FLAVOUR HOMESTYLE MASALA
10. DEHYDRATED APPLE CUBES
11. FLAVOUR STRAWBERRY APPLE
12. QUICK COOKING OAT
13. WHEAT FLAKES
14. BARLEY FLAKES
15. RAGI FLAKES

(PIH)



(Manufacturer)

ANNEXURE C
PACKAGING MATERIALS

(To be shared separately)

(PIH)



ANNEXURE D
SPECIFICATIONS AND STORAGE OF MATERIALS

1. As per the Technical Transfer Document (TTD), PAE and weak links provided by Company from time to time.

(PIH)



ANNEXURE E
YIELD & LOSS ALLOWANCES

The yields of raw and packaging material will be as per the following norms.

	RM Yield	PM Yield
Quaker		
Flavour Oats 40gm	98.5%	99.0%
Flavour Oats 400gm	98.5%	100.0%
Oats Plus 300gm	99.0%	99.7%
Oats Plus 600gm	99.0%	99.7%

(PIH)



**ANNEXURE F
TRADEMARKS**

Quaker

(PIH)

(Manufacturer)



ANNEXURE G
PURCHASE PRICE & TERMS OF PAYMENT & STANDARD COSTING MODEL

Pack size	40g	40g	40g	40g	400g	400g	300g	600g
Product	HOME STYLE MASALA	STRAWB ERRY	KESAR	TOMATO VEGGIE	HOME STYLE MASALA	TOMATO VEGGIE	Oats Plus	Oats Plus
Raw Material	117.43	153.60	139.37	118.15	118.55	119.51	85.21	85.21
Packing Material	34.46	32.51	32.51	34.46	9.64	9.64	9.32	7.71
Total Material Cost/Kg	151.89	186.11	171.88	152.61	128.20	129.16	94.53	92.92
Blending	0.07	0.07	0.07	0.07	0.82	0.82	0.94	0.94
Packing	8.53	8.53	8.53	8.53	2.82	2.82	3.27	3.27
Total Blending & Packing / Kg	8.61	8.61	8.61	8.61	3.64	3.64	4.21	4.21
Manufacturing Overhead	-	-	-	-	-	-	-	-
Administrative Overhead	8.89	8.89	8.89	8.89	8.89	8.89	2.90	2.90
Finance charge	1.71	1.71	1.71	1.71	1.71	1.71	1.32	1.32
Total Overheads/Kg	11.11	11.11	11.11	11.11	11.11	11.11	4.56	4.56
Margin	-	-	-	-	-	-	-	-
Total Ex Works Price/Kg	177.80	212.02	197.80	178.52	149.15	150.11	106.53	104.92

Note:

1. It is mutually agreed that any upward/downward revision in the prices of Raw material and packing material cost will be actualised quarterly.
- 2.



ANNEXURE H

**RAW MATERIAL QUALITY & FOOD SAFETY POLICY, THE COMPANY'S RAW
MATERIAL QUALITY AND FOOD SAFETY POLICY AND THE CO-
MANUFACTURING SUPPLY QUALITY HANDBOOK**



ANNEXURE I

WRITTEN DOWN VALUE

Note: This schedule will be included if provisions of 19.6 to 19.11 are applicable/included in the Agreement.

Written Down Value ("WDV") shall be calculated after deducting depreciation for the period from the Effective Date of the Agreement to the last payment made to the Manufacturer.

Depreciation rates for Plant and machinery will be at 10% per annum (straight line method).

