

**VENDOR AGREEMENT**

<b>Vendor:</b>		<b>State of Incorporation:</b>	[ex. Delaware]
<b>Attention:</b>		<b>Tax Payer ID/FEIN:</b>	
<b>Title:</b>		<b>Address:</b>	
<b>Telephone:</b>		<b>City, State, Zip:</b>	
<b>Fax No.:</b>		<b>Territory:</b>	Worldwide
<b>E-mail:</b>		<b>Effective Date:</b>	

This Vendor Agreement (“Agreement”) sets forth the terms and conditions applicable to the purchase of perishable and non-perishable food and beverage items and other non-food goods (“Products”) from the Vendor identified above for the purpose of distribution, marketing and resale by DPI Specialty Foods, Inc., a Delaware corporation with its principal place of business located at 601 Rockefeller Avenue, Ontario, California 91761 (“DPI”) and DPI Divisions. As used herein, “DPI Division” shall mean a DPI subsidiary or related entity (currently consisting of, and subject to change, DPI Specialty Foods West, Inc., DPI Specialty Foods Northwest, Inc., and DPI Specialty Foods Rocky Mountain, Inc.). Each DPI Division is a wholly-owned subsidiary of DPI and is hereby made a Party to this Agreement.

**1. APPOINTMENT AND TERRITORY**

Vendor authorizes DPI to market, promote, sell and distribute the Products within the geographic region identified above (“Territory”).

**2. PRICING**

Vendor will sell the Products to DPI at Vendor’s current standard list price or as otherwise agreed between the Parties in writing. All prices, discounts and promotions offered to DPI shall be no less favorable than those prices, discounts and promotions extended to any other customer of Vendor of similar size and scope.

**3. ORDERS**

DPI may purchase Products by issuing a purchase order via email or Electronic Data Interchange, specifying the stock keeping unit (“SKU”) quantity and cost, the method of delivery, the required delivery date and the “ship to” location (“P.O.”). Within one (1) business day of receipt, Vendor shall confirm the P.O. information to DPI. Cost discrepancies must be reconciled by Vendor at the time that the P.O. is confirmed. When DPI provides access to Vendor, Vendor must monitor and use DPI’s web portal for all data entry regarding P.O.’s, pricing and allowances. Prior to delivery, DPI may, in its sole discretion, accept or cancel any P.O. that differs from those terms previously approved in writing. Vendor shall be liable for any additional costs incurred by DPI due to Vendor’s non-compliance with this section. DPI has the right to cancel, reschedule, change the location of delivery or change the number of Product units in a P.O., without penalty, by providing Vendor with written notice at least two (2) business days prior to the scheduled shipment date for orders shipped within the continental United States, or reasonably prior to the scheduled shipment date for all other orders.

**4. SHIPMENT AND DELIVERY**

If Vendor arranges for the transportation of Products from Vendor’s location to DPI via a carrier of Vendor’s choosing, the shipment is FOB destination with Vendor bearing all costs for freight, insurance, duties, taxes and other shipping expenses to the destination specified in the P.O. and shall bear all risk of loss until the goods are received by DPI at the specified destination. If DPI arranges for the transportation of Products from Vendor’s location via a carrier of DPI’s choosing, Products will be shipped FOB origin, with DPI bearing risk of loss and taking title upon delivery of the Products to the carrier. Vendor or Vendor’s carrier must schedule a dock appointment with the applicable DPI location at least seventy-two (72) hours in advance of delivery. Receipt of an order does not constitute acceptance of all Products in that order. DPI has the right to inspect and reject all or part of any order for non-conforming Products, Product shortages or shipping damage. Vendor will correct any such defects and DPI will deduct credit amounts from any open invoice or require Vendor to issue a check in the amount of the credit, in DPI’s sole discretion. In no event does acceptance constitute approval or waiver of any latent defect, nor waiver of any warranty.

**5. PAYMENT**

Vendor will invoice DPI upon shipment. Invoices are to be emailed to [DPI-AP@dpspecialtyfoods.com](mailto:DPI-AP@dpspecialtyfoods.com) or via postal mail to DPI Accounts Payable, 601 Rockefeller Ave, Ontario, CA 91761. Unless otherwise specified on the P.O., payment terms are 2% 10 Net 35 days EFT calculated from the date of actual receipt of goods or the date of DPI’s receipt of the invoice, whichever is later. Invoiced amounts should be equal to the gross purchase order cost less any applicable discounts and allowances. Invoiced quantities are confirmed against receiving documents and are paid based on received quantities after

verification against DPI's purchase order and bill of lading. Amounts due from Vendor to DPI will be deducted from any outstanding invoice payments. Debit memos will be immediately applied against outstanding invoices. If there are insufficient invoice balances to offset the amounts due from Vendor, payment from Vendor will be due 30 days from the date of debit memo, unless specified elsewhere. Account discrepancies or payment disputes shall be resolved with the applicable DPI Division within sixty (60) calendar days of the payment or deduction. If the Parties are unable to resolve the dispute, the matter shall be escalated to DPI's National Vendor Relations team. No DPI Division may be placed on credit hold unless the Parties are unable to resolve the dispute within sixty (60) days after escalation to DPI's National Vendor Relations team. No dispute may be initiated more than ninety (90) days from the date the payment was made or the deduction was taken, whichever is later. If Vendor's account is referred to an attorney or collection agency for collection, Vendor shall pay all of DPI's expenses incurred in such collection efforts including, but not limited to, collection agency fees, court costs and reasonable attorneys' fees.

## **6. CREDITS, RETURNS, AND RETAILER FEES**

DPI shall have the right to return, at Vendor's expense, and for full credit or refund, any Products that are: (i) shipped in error or in non-conformance with a P.O.; (ii) defective or past the expiration date; or (iii) not manufactured, packaged or labeled in accordance with industry standards and/or applicable laws, ordinances, rules and regulation. If requested by Vendor, DPI shall hold damaged Products for a maximum of fourteen (14) days for inspection. At the end of the 14-day period, unless directed by Vendor to return the Products, DPI shall dispose of the Products and charge back Vendor for the cost of the Product and all costs associated with its disposal. All returns will be at Vendor's sole cost and risk of loss. Vendor shall be liable, and shall reimburse DPI, for 100% of the reclamation costs incurred by DPI for store-level returns and chargebacks from DPI customers. All store-level returns will be destroyed in field and will not be sent back to Vendor.

When a DPI Customer deducts or passes through a charge related to Vendor's Products, Vendor shall be solely liable and responsible for the retailer initiated chargebacks, including without limitation, charges for depletion, scan down, customer program pass-through, customer fines, coupon redemptions, advertising fees, resets, promotional allowances, product loss claims and reclamations, special events, returns, invoice discrepancies, in-store demonstrations, slotting fees, product recalls and third party audits. DPI will charge Vendor a processing fee for each chargeback per invoice per DPI Division in accordance with the DPI Administrative Fee Schedule Exhibit A. Upon Vendor's request, DPI will provide reasonable supporting documentation for customer chargebacks.

## **7. INSURANCE**

During the term of this Agreement, and for a period of five (5) years after, Vendor shall maintain, at its sole cost and expense: (i) General & Commercial Liability Insurance and Personal and Advertising Injury in amounts not less than \$3 million per occurrence and \$3 million annual aggregate (an Excess Liability/Umbrella policy may be used to increase the primary General Liability limits); (ii) Automobile Liability Insurance in amounts not less than \$1 million per occurrence and \$2 million annual aggregate; (iii) Workers' Compensation Insurance in no less than the statutory minimum for the State(s) in which Vendor operates. Vendor shall name "DPI Specialty Foods, Inc., its parents, subsidiaries and affiliates" as additional insured with its insurance provider. Within ten (10) days of execution of this Agreement and annually thereafter, Vendor shall provide a current Certificate of Insurance reflecting the types of coverage and limits required. The certificate should be sent electronically to: [DPI-MDM-COI@dpspecialtyfoods.com](mailto:DPI-MDM-COI@dpspecialtyfoods.com). Except as expressly provided in this Agreement, these insurance requirements shall not limit Vendor's liability to DPI in the event insurance recoveries/proceeds are less than Vendor's liability to DPI.

## **8. INDEMNIFICATION**

Vendor shall indemnify, defend and hold harmless DPI, its parents, affiliates, subsidiaries, related entities, and their officers, directors, employees, agents, successors and assigns (collectively, "Indemnified Party") from and against any third party claims, demands, liabilities or losses, damages, and expenses (including reasonable attorneys' fees and costs) related to the including, without limitation, claims based upon: (i) any product liability or similar claims arising or resulting from the use or consumption of any Products, including claims seeking damages for personal injury or property damage arising from or in relation to Products; (ii) any intentional misconduct or negligence by Vendor or its employees or agents in performing its obligations under this Agreement; (iii) any third party claim that Products, or any part thereof, infringes or misappropriates any Intellectual Property Right of a third party; (iv) the failure or alleged failure of Products to comply with any express or implied warranties of Vendor; (v) the violation or alleged violation of any law, statute or governmental ordinance due or related to the manufacture, possession, use or sale of any Products; (vi) any actual or alleged unfair business practices, false advertising, misrepresentation or fraud resulting from the Products or materials related to the Products and provided by Vendor; (vii) any breach or alleged breach of a Vendor representation or warranty or any other provision of this Agreement by Vendor. An Indemnified Party shall promptly notify Vendor in writing if a credible claim is made or threatened; provided, however, that any delay or failure to give such notice will not waive nor diminish any rights of an Indemnified Party except to the extent that the rights of Vendor are actually prejudiced thereby. Vendor shall conduct the defense of such claim at its

sole cost and expense, provided that the Indemnified Party may join in the defense of such claim and employ counsel at its own expense. Vendor may not settle or compromise the claim without the Indemnified Party's consent unless such settlement (A) includes a release of all covered claims pending against the Indemnified Party; (B) contains no admission of liability or wrongdoing by the Indemnified Party; and (C) imposes no obligations upon the Indemnified Party. The Indemnified Party agrees to provide reasonable assistance to Vendor in the defense of such claim or action, at the Vendor's expense.

## **9. REPRESENTATIONS AND WARRANTIES**

Vendor represents and warrants that all Products (including Products grown, produced or manufactured outside of the United States) shall: (i) conform to the specifications, descriptions and labels; (ii) be merchantable; (iii) be free from defects in workmanship, material, packaging, construction, and design, (iv) be fit and sufficient for the purpose for which it is intended and/or which is stated on any packaging, labeling or advertising, (v) be free of any and all liens and encumbrances of any kind, (vi) conform to all domestic and international legal requirements and shall not be in violation or cause DPI to be in violation of any applicable law, rule or regulation (including without limitation, export, environmental and hazardous substance laws, regulations, rules and directives) and (vii) comply with all applicable federal, state or local laws, regulations, ordinances, or administrative orders or rules, regarding all food labeling, disclosure and safety laws, rules, regulations and ordinances, as of the date of such shipment or delivery, are not adulterated or misbranded and are not articles which cannot be introduced into interstate commerce. **DISCLAIMER. THE FOREGOING EXPRESS WRITTEN WARRANTIES BETWEEN THE PARTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, EXPRESS, IMPLIED OR STATUTORY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT IT IS ILLEGAL OR UNENFORCEABLE UNDER APPLICABLE LAW.**

## **10. PRODUCT SAFETY & RECALLS**

- 1) **PRODUCT SAFETY:** Vendor shall be in compliance with all FDA, USDA and other appropriate federal, state and local laws, rules or regulations, including, without limitation, all food labeling, disclosure and safety laws, rules, regulations and ordinances and the Bioterrorism Act, at the time of shipment and delivery of any Products.
- 2) **FOOD SAFETY AUDITS -** Annually, Vendor shall provide DPI with a copy of their third-party food or product safety audit within thirty (30) days after the audit has been performed or certification issued. In addition, DPI may require Vendor or manufacturer to provide appropriate food safety and/or product safety related documentation, including vendor provided photographs, to validate compliance with this section. Redacted documents are not acceptable. Vendor also agrees that DPI may conduct, at DPI's expense, pre-arranged visits and audits of Vendor's facilities during normal production or business hours.
- 3) **SUPPORTING DOCUMENTATION -** Prior to the initial shipment of any Products, Vendor shall provide DPI with: (i) a copy of its Food Safety Plan, which shall include a functioning HACCP and /or HARPC plan; (ii) a copy of an approved, third-party Food Safety Management System Audit; and (iii) proof of FDA or USDA facility registration or other documentation as required for DPI to determine that the Products supplied are produced within a framework of a food or product safety management system.
- 4) **PRODUCT RECALLS & MARKET WITHDRAWALS:** Product recall or market withdrawal notifications shall be immediately sent by Vendor to [DPI-FoodSafety@dpspecialtyfoods.com](mailto:DPI-FoodSafety@dpspecialtyfoods.com), with a hard copy sent to DPI's General Counsel 601 Rockefeller Avenue, Ontario, California 91761, and shall include the severity level of the recall (Class I, II or III), applicable UPCs, Products description, code dates, Lot codes ship dates, Products photographs and DPI purchase order number(s). The product recall or market withdrawal notification shall also include explicit instructions as to what actions Vendor requires DPI to perform and what is the disposition of the affected Products. Vendor shall fully indemnify and reimburse DPI for any and all costs associated with a recall or withdrawal, including without limitation, DPI's inventory disposal or return, customer inventory disposal or return, and all customer fees charged for recall or withdrawal of product(s). In addition to the aforementioned costs, DPI will charge Vendor a recall processing fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
- 5) **CERTIFICATES OF ANALYSIS:** Upon DPI's written request, Vendor will provide DPI with a Certificate of Analysis for each production lot shipped to DPI. The Certificate of Analysis will accompany the Products so that it is available for review at the time of receiving.
- 6) **SAFETY DATA SHEETS (SDS):** - During the onboarding setup process, Vendor will provide SDS as warranted. This is in compliance with the Globally Harmonized System and Federal OSHA regulations. Vendor also agrees to supply DPI with an updated, within 30-days, copy of any revised SDS documents. This section applies to all products deemed to be or contains a hazardous material as defined by GHS and/or OSHA.

**11. AUDIT OF BUSINESS TRANSACTIONS**

Vendor shall keep full and detailed accounts for a period of not less than five (5) years and shall permit DPI, with prior notice, to audit up to five (5) years of Vendor's books and records with respect to Vendor's charges, policies, procedures and transactions with DPI.

**12. CONFIDENTIALITY**

"Confidential Information" means any information disclosed by one party or its agents (the "Disclosing Party") to the other (the "Receiving Party") that is designated as confidential or that should reasonably be considered confidential given the nature of the information or the circumstances surrounding its disclosure, including without limitation, any information relating to the Disclosing Party's technology, business plans, Products, services, customer information, pricing information, financial statements, and third-party information that the Disclosing Party is obligated to keep confidential. Confidential Information does not include information that is: (a) publicly known at the time of disclosure, (b) lawfully received from a third party free from restrictions of confidentiality, (c) subsequently made public by the Disclosing Party, (d) generated independently by the Receiving Party, or (e) required to be furnished by law, subpoena or court order, provided that the Disclosing Party shall be given prior written notice of such legal request within a reasonable time to seek a protective order or other appropriate relief with respect to such Confidential Information. The Receiving Party, shall protect Confidential Information and shall not disclose Confidential Information except to its officers, advisors, consultants or employees who have a reasonable need to know such Confidential Information and owe a duty of confidentiality. Each Party shall use at least a reasonable degree of care in protecting the Confidential Information. The Parties agree that a breach of the confidentiality obligations hereunder would cause immediate and irreparable harm to the Disclosing Party and shall, in addition to all other remedies, entitle the Disclosing Party to seek injunctive relief without requiring the Disclosing Party to prove irreparable harm or provide the posting of a bond.

**13. TERM AND TERMINATION**

This Agreement shall commence on the Effective Date and shall remain in force for one (1) year. Thereafter, the Agreement will automatically renew for additional one (1) year terms until terminated as per the Agreement. Either Party may terminate this Agreement, with or without cause, by providing sixty (60) days' prior written notice to the other Party. Either Party may terminate this Agreement within thirty (30) days upon written notice to the other Party, if the other Party materially breaches any term of this Agreement and fails to cure such breach within the 30-day period. Either Party may immediately terminate this Agreement without liability in the event that: (i) a receiver is appointed for the other Party or its property; (ii) the other Party becomes insolvent or unable to pay its debts or makes an assignment for the benefit of its creditors; (iii) any proceedings are commenced by or for and/or against the other Party under any bankruptcy, insolvency or debtors' relief law; or (iv) the other Party is liquidated or dissolved.

**14. SETTLEMENT OF ACCOUNTS**

Upon notice of conclusion of Vendor's relationship with DPI (i.e. discontinuation of Products) DPI will hold payments to Vendor to cover the following components of a Settlement Reserve:

- Value of Vendor's inventory on hand with DPI (to be reassessed monthly)
- 10 weeks of average weekly sales over the previous 9 months in order to cover promotional/markdown and all other charges from retailers.

Remittances by DPI of outstanding amounts owed to Vendor subsequent to receiving conclusion notice will be made in accordance with payment terms for any balance exceeding the aforementioned Settlement Reserve.

Upon final retail shipment of Vendor's Products (shipment curtailment), DPI will hold the Settlement Reserve for four months in order to allow for the offset of retailer and DPI charges against the Reserve. A deduction/charge will be made against the Settlement Reserve balance for the value of all remaining Vendor inventory on hand with DPI as of four months after shipment curtailment. Final settlement payment of the residual Reserve balance will be made by the end of the fifth month following shipment curtailment.

**15. NOTICES**

Notices will be in writing and delivered by email with confirmation of receipt, in person, national overnight carrier, or mailed by certified or registered mail, postage prepaid and addressed as set forth on the signature page of this Agreement. If notice is given by email, in person, or overnight carrier, it will be effective upon receipt; if notice is given by mail, it will be effective three (3) business days after deposit in the mail.

**16. INDEPENDENT CONTRACTORS**

DPI and Vendor are independent contractors and nothing in this Agreement creates the relationship of partner, joint venture,

principal and agent or of any association or relationship between the Parties other than that of buyer and seller. Neither Party shall make any representation to any third party either directly or indirectly indicating that it has, in any way, authority to act for or on behalf of or to obligate the other Party in any way whatsoever. Each Party is responsible for all taxes, duties and other governmental assessments incurred as a result of such Party's performance under this Agreement.

**17. MISCELLANEOUS**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, exclusive of choice of law rules. Venue for action under this Agreement shall be brought in a court of competent jurisdiction in San Bernardino County, California. In the event of litigation between the Parties, the prevailing Party shall be entitled to recover its cost and expenses in such litigation, including, without limitation, court costs, reasonable attorneys' fees and disbursements. Neither this Agreement, nor any rights granted hereunder, may be assigned by either Party voluntarily or by operation of law without the other Party's prior written consent, which shall not be unreasonably withheld or delayed. The Parties have engaged in arms-length negotiation in arriving at this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. The failure of either Party to require performance at any time by the other Party of any provision hereof shall not affect in any way the full rights to require such performance at any time thereafter. The waiver by either Party of a breach of any provisions hereof shall not be taken, construed, or held to be a waiver of the provision itself or a waiver of any breach thereafter or a waiver of any other provision hereof. A judicial determination that any provision of this Agreement is invalid, in whole or in part, shall not affect the enforceability of those provisions unaffected by the finding of invalidity. Notwithstanding the termination or expiration of the term of this Agreement or any renewal period thereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive. This Agreement may be executed in any number of counterparts or duplicate originals, all of which shall be considered one and the same Agreement. Facsimile signatures on one or more counterparts of this Agreement shall be as effective as original signatures.

**18. ENTIRE AGREEMENT**

This Agreement, including any Exhibits attached hereto and fully incorporated herein, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous written or oral communications or agreements between the Parties hereto respecting the subject matter hereof, including but not limited to any terms and conditions contained on any pre-printed forms, purchase orders, purchase order acknowledgement and invoice. In addition, no amendment or modification to this Agreement shall be valid unless set forth in writing and signed by an authorized representative each of the Parties.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above. Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and that the terms of this Agreement are binding upon and enforceable against the entity on whose behalf it is signed.

**VENDOR:** \_\_\_\_\_

**DPI SPECIALTY FOODS, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Send a copy of notices to:

Send a copy of notices to:

DPI Specialty Foods, Inc.  
601 Rockefeller Ave.  
Ontario, CA 91761  
Attn: General Counsel

**EXHIBIT A**

**ADMINISTRATIVE FEES**

In the process of bringing Manufacturers' Products to the marketplace, DPI incurs administrative expenses that will be assessed to the Vendor as a non-negotiable fee per the schedule below. Vendors have the option to pay fees as they are incurred or to participate in the Administrative Efficiencies Allowance program at 1.75% of purchases and have fees waived.

Please indicate the method you select for addressing administrative fees by initialing as indicated in the fee schedule below. By initialing your selection of the Administrative Efficiencies Allowance, you are authorizing DPI to apply a 1.75% off invoice allowance in lieu of the listed administrative fees. If you do not indicate a preferred method, fees will be assessed as they are incurred.

**DPI ADMINISTRATIVE FEE SCHEDULE**

SELECT METHOD FOR ADDRESSING ADMIN FEES		
ASSESS FEES AS INCURRED <i>Initial to indicate selection: _____</i>	OR	ADMINISTRATIVE EFFICIENCIES ALLOWANCE (AEA) PROGRAM (1.75%) <i>Initial to indicate selection: _____</i>
Item Set Up / Item Changes / Item Activation		Fees Covered by Administrative Efficiencies Allowance
Item Replacement / Pack Change Rush Fee (less than 90-day notice)		
Chargeback Processing (non-Promo)		
Chargeback Processing Fee (Promo)		
Cut Case Fee		
Out-of-Cycle Cost Change		
Product Transfer Processing Fee		
Non-compliant Shelf Life Handling		
Disposition Fee		
Recall Processing Fee		

**EXHIBIT B**

**NEW & EMERGING VENDORS**

1. DPI classifies a Vendor as “New and Emerging” if it meets all of the following criteria:
  - A. Company annual revenue is less than \$1M and there are no more than 50 employees
  - B. Vendor has not sold Products to any DPI Division
2. The “New and Emerging” classification will apply until total DPI annual purchases exceed \$100,000, but no longer than 2 years.
3. DPI recognizes that there is upfront investment spend incurred by small businesses when launching new and innovative products to the retail market. We want to support innovation and small business but need to be mindful of the costs and exposure incurred by DPI. Therefore, we have implemented the following changes to our standard policy for New and Emerging Vendors:
  - A. Administrative Fees: New and Emerging Vendors will participate in the Administrative Efficiency Allowance program as outlined on Exhibit A
  - B. Payment: Payment terms are 1% 10, Net 35 days EFT, unless other payment terms have been agreed upon in writing. All cash discount days shall be calculated from the date of actual receipt of goods or the date of the invoice is received, whichever is later. Notwithstanding the foregoing, payment terms for all initial orders from any New and Emerging Vendor shall be Net 90 days date of invoice. In the event that a significant portion of the initial order inventory remains on hand beyond the 90 day term, DPI may extend this initial payment period to allow for receipt of DPI customer marketing charges. Payment terms will revert to Agreement standard terms of 2% 10, Net 35 days EFT after a 2-year period or when DPI annual purchases exceed \$100,000.
  - C. Initial Orders: Vendor will allow DPI to order less than the published minimum order quantity for the first three (3) orders to any DPI warehouse. Vendor will guarantee Products purchased by DPI for the initial six (6) months of distribution of each Product. All Products are sold to DPI by Vendor as a guaranteed sale item unless otherwise agreed to in writing by both Parties.
  - D. Introductory Allowance – A reduced introductory allowance of 10% will be applied to the initial orders of new Products for each DPI division. This allowance will be used to offset the initial capital investment and mitigate costs by DPI to market new products to additional customers in order to expand distribution.

**Does Vendor Qualify as New and Emerging Vendor Status? \_\_\_\_ (Initial here if qualified)**

*By initialing above, you are requesting New and Emerging Vendor status and agreeing to all terms stated above.*

*Vendor may be required to provide proof that shows company revenue is less than \$1M and employee count is no greater than 50.*



EXHIBIT C

**DPI SPECIALTY FOODS VENDOR POLICIES**

DPI may modify these Vendor Policies, in its sole discretion, upon fifteen (15) days' prior written notice.

**1. Initial Order Payment Terms**

- A. Payment terms for all initial orders from any new Vendor shall be Net 90 days date of invoice. If replenishment orders are issued by DPI within the initial order 90 day hold period, Vendor may request that the hold be reviewed by DPI for early release of payment and all orders subsequent to the initial orders will revert to the mutually agreed upon standard payment terms in this document.
- B. In the event that a significant portion of the initial order inventory remains on hand beyond the 90 day term, DPI may extend this initial payment period to allow for receipt of DPI customer marketing charges. If Vendor does not wish to extend the initial order payment term when a significant portion of the initial order remains on hand at DPI, the Vendor may choose to approve an RTV of the remaining inventory at Vendor's full cost and expense and then receive payment on any balance due.

**2. New Item Introduction, Item Replacement/Pack Changes and Product Performance Guarantee**

- A. A standard Introductory Allowance of 18% will be applied to the initial orders of new Products for each DPI division. This allowance will be used to offset the initial capital investment and mitigate costs by DPI to market new products to additional customers in order to expand distribution.
- B. DPI Customers often require a "free fill" for new item placement. The "free fill" cost calculation shall be at DPI's selling cost to the customer.
- C. Item replacements and/or pack changes will require 90-day notification. Any item replacement or pack change received with less than 90-day notification will be subject to a "rush" fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
- D. All new items, item replacements and/or pack changes added to a DPI division, including seasonal items and shippers, will be subject to a performance guarantee. Any item that does not perform at the level of 2 cases per week for a standard item, 3 units per week for a single pick or cut case item, or unsold shippers may be considered for discontinuation by DPI if Vendor and DPI cannot come to a solution to increase sales to an acceptable level. If it is determined that an item will be discontinued by DPI, Vendor will be fully responsible for all inventory remaining in the DPI warehouse. Return to Vendor (RTV) arrangements may be coordinated with the DPI Buyer with Vendor bearing all costs associated with the RTV including Product landed cost, return freight, and disposition fees.

**3. Warehouse Spoils and Retailer Product Loss Claims**

- A. All warehouse items will be subject to a spoils guarantee which includes, but is not limited to; out of date/past best buy code, defective lots, damaged, or unsaleable. DPI may accept a suitable off-invoice spoils allowance in lieu of a full spoils guarantee by completing DPI Warehouse Spoils Allowance Exhibit E.
- B. All Products are subject to full reclaim as required by individual Retail Customer policies including Retailer required swell allowances. Retailer product loss claims will be passed through to the Vendor.

**4. Promotions**

- A. Off Invoice ("OI") is the preferred method of promotion for DPI. All OI promotions are to be submitted with specific buy dates for the promotional period. DPI Procurement will make every attempt to accurately forecast promotional inventory needs and order accordingly. In the event the promotional activity exceeds inventory ordered during the buy period, over-pull promotional shipments will be charged back to the Vendor at the O.I. promotional rate to make DPI whole. All Shipper promotions require an OI promotion unless otherwise approved by DPI

- B. DPI will also accept Manufacturer Chargeback (“MCB”) promotions. All MCB promotions are to be submitted with specific sell dates for the promotional period. MCB promotions will be charged back to Vendor weekly based on all eligible outbound case movement during the promotional period. MCB promotions are subject to a Chargeback Processing Fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
- C. Promotional allowances will be rounded up to an amount evenly divisible by case pack to ensure proper pass through to the retailer.
- D. All promotions are to be submitted with 180 day prior notification utilizing the DPI Promotion Form as provided to Vendor by DPI representative or via the DPI Web Portal once access is provided.

**5. Vendor Cost Change Policy**

- A. Cost Change Schedule
  - 1. All cost changes will be accepted and implemented based on the current DPI Cost Change Calendar as published on the Vendor Data Management Web Portal (<http://isupplier.dpspecialtyfoods.com/>) or per customer requirements. DPI will reject any cost change that is not properly submitted within the submission date range. Orders placed by DPI prior to the cost change effective date will be invoiced at current cost as of the order date, not the P.O. ship date.
  - 2. Cost changes that are received out-of-cycle of the current DPI Cost Change Calendar or corrections required due to submission error may be charged an Out-of-Cycle “rush” fee in accordance with the DPI Administrative Fee Schedule Exhibit A
  - 3. Cost changes should not conflict with previously presented promotional programs. Cost changes that conflict with scheduled promotions will not go into effect until after the scheduled promotion has ended or will require cost protection of the agreed to promotional net cost.
- B. DPI does not accept cost changes by way of P.O. confirmations. If a cost change is not properly submitted within DPI requirements, a claimed cost discrepancy at time of P.O. Confirmation will be denied.
- C. Cost changes must be submitted through the Vendor Data Management Web Portal (<http://isupplier.dpspecialtyfoods.com/>). In the event that the Web Portal is not available, cost changes will be submitted to each DPI division using the DPI Cost Change Form provided by the division procurement team.
- D. All submitted cost changes must include the following and will not be considered submitted if any item is missing:
  - 1. Completed DPI Cost Change Form
  - 2. Cost change justification letter on Vendor letterhead stating the date of the last cost change and clearly explaining the specific factors driving the cost change with supporting documentation (e.g., market changes tied to ingredients, packaging, etc.).
  - 3. Updated Standard Cost List reflecting new costs and effective date for all Products available for purchase.
- E. If customer(s) of DPI refuse to accept a Vendor submitted cost change, Vendor shall determine whether they will (i) rescind the cost change, (ii) provide a chargeback to cover the cost difference for that customer(s), or (iii) discontinue distribution of their Products to that customer(s).
- F. Price Protection: “Price Protection” means a credit for the difference between DPI’s previous invoice price and the new lower invoice price. DPI requires price protection on all affected products in inventory as of the effective date of any price decrease.

**6. Warehouse Policy**

- A. Vendor Delivery
  - 1. All shipments shall be palletized, include pallet labels and shrink wrapped and include a clearly visible packing slip.

2. Packing lists must include:
  - a) Vendor and shipper name
  - b) DPI P.O. number
  - c) SKU number/item number
  - d) Order quantity (must match P.O. quantity)
  - e) Proof of Delivery receipt (DPI must be able to retain a copy of the signed POD)
  - f) closed coded shelf life dates, which shall be interpreted with actual expiration dates
  - g) accurate counts of cases shipped and number of pallets, and
  - h) accurate total gross weight, including the weight of the pallets
  - i) Bill of Lading
  - j) Information must be affixed on the surface area of one side of one pallet.
3. Pallet Labels must include:
  - a) Purchase Order Number
  - b) Vendor Name
  - c) Origin Information
    1. Name
    2. Address
  - d) Destination Information
    1. Name
    2. Address
  - e) Pallet Labels must be affixed to at least two adjacent sides of each pallet in the upper right hand corners.
4. For all “Catch Weight Items”, the invoiced weight and/or weight sheet must accompany the shipment. If the total actual weight is not provided or incorrect, this may cause a delay in payment or DPI may refuse to accept the order.
5. Identical SKU’s must be shipped together on the same pallet unless ordered in greater or less than pallet quantities. Any identical SKUs shipped with mixed expiration dates must be separated at the time of delivery. Products ordered in even layers, as identified by Vendor, must be shipped in such layers. All shipments must be configured to DPI’s “tie and high” standards upon arrival at the DPI Division. Vendor shall be responsible for all sorting and segregating charges, including, without limitation, any lumper fees incurred from vendor delivered shipments (prepaid shipments) that contain mixed or non-conforming pallets.
6. For all inbound freight, Vendor or Vendor’s carrier must schedule a dock appointment with the applicable DPI Division, at least seventy-two (72) hours in advance of delivery. Appointment is to be scheduled on, or prior to, the need by date listed at time of PO confirmation. If Products are delivered later than the listed need by date, DPI may assess a \$175 on-time performance infraction fee.
7. DPI requires that all products be palletized on standard 4-way GMA (Grocery Manufacturers Association) pallets size 40” x 48”.
  - a) DPI is a pooled-pallet participant with CHEP (DPI preferred pallet).
  - b) Vendors shipping products into DPI facilities may participate in pallet exchange.
    1. DPI will only exchange Grade B or better (only one repair allowed per pallet) 4-way GMA pallets size 40” x 48”.
    2. Broken pallets are not accepted and fees may apply for non-compliant pallets.
8. Vendor will be notified of any non-conforming shipment. DPI shall provide Vendor with a count and quantity of the non-conforming item(s) received. DPI shall reject and return the shipment, in whole or in part, at Vendor’s sole cost and risk of loss.
9. Within seventy-two (72) hours of delivery, Vendor will be notified of any concealed damage to any Products. If requested by Vendor, DPI shall hold damaged Products for a maximum of fourteen (14) days for inspection. At the end of the 14-day period, unless directed by Vendor to return the Products, DPI shall dispose of the Products and charge back Vendor for the cost of the Products and all costs associated with its disposal. All returns will be at Vendor’s sole cost and risk of loss.

10. Any back orders shipped by Vendor shall be rejected by DPI and returned at Vendor's sole cost and risk of loss.

**B. DPI Pickup**

1. DPI requires a legible bill of lading to accompany all inbound shipments. Multiple purchase orders scheduled for pickup on the same day and delivery to the same DPI location must include one master bill of lading, so as to constitute one shipment.
  - a) Bill of lading requirements:
    1. Origin Information including i) Name, ii) Address, and iii) Contact Information
    2. Destination Information including i) Name, ii) Address, and iii) Contact Information
    3. Pickup Date
    4. Need by Date
    5. Purchase Order Number(s)
    6. Total number of cartons and weight by commodity description. As well as the following where applicable:
      - National Motor Freight Classification (NMFC)
      - NMFC Freight Class
      - Temperature Requirements
    7. Subtotal of handling units, weight and cartons
    8. Carrier Name
2. DPI or its designated agent ("Carrier") may pick up Products at Vendor's dock. If the Carrier is required to wait at Vendor's dock for more than thirty (30) minutes beyond the scheduled pick up time, Vendor shall be liable for any and all detention charges that may be assessed by the Carrier.
3. Once a shipping appointment has been made, Vendor's shipping department is required to notify DPI and Carrier if load size has changed by more than 10% in weight or volume. Vendor shall be liable for any and all additional freight costs incurred by DPI Vendor's failure to provide adequate notice.
4. Carrier shall sign all load sheets "shipper load and count" (SLC) or "said to contain" (STC). If any shortage is discovered upon delivery, DPI will deduct the amount of shortage from Vendor's invoice.
5. If Products are not available at Vendor's dock on the listed pick-up date at time of PO confirmation, Vendor will be responsible for any dry run fees or truck order not used fees assessed by the carrier and DPI may assess a \$175 on-time performance infraction fee.

**C. Vendor Performance Levels and Inventory Management**

1. On time and in full shipments are critical to the supply chain. Vendor shall maintain an average fill rate of 95% or higher ("Fill Rate Threshold") on a consistent basis with a minimum acceptance level of 92% for any individual item. If the fill rate falls below the Fill Rate Threshold for more than two (2) consecutive P.O.s, Vendor shall provide written notice to DPI. Such notice shall state the reasons for the inability to meet the Fill Rate Threshold and the anticipated date for a return to compliance with the Fill Rate Threshold. All notifications shall be sent to [DPI-VendorStockouts@dpspecialtyfoods.com](mailto:DPI-VendorStockouts@dpspecialtyfoods.com), as well as any and all DPI Divisions purchasing the Products.
2. Vendor shall notify DPI of any quantity change at time of PO confirmation. If DPI is not notified and Product quantity received is short, DPI will apply a Service Level Non-Compliance Fee of 10% to the delta between your service level and the 92% minimum acceptance level.
3. Vendor shall provide written notice to DPI within five (5) days of identification of any expected

long term stock shortage. Such notice shall state the reasons for the expected long term stock shortage and the anticipated date when Vendor shall be able to ship or deliver Products. All notifications shall be sent to [DPI-VendorStockouts@dpispecialtyfoods.com](mailto:DPI-VendorStockouts@dpispecialtyfoods.com), as well as any and all DPI Divisions purchasing the Products.

4. If Products are shipped to a DPI Warehouse in excess of the quantity ordered (“over-ship”), DPI may agree to receive the excess inventory at a discounted rate of 35%.
5. In the event the Vendor does not wish to extend discount or DPI declines to receive excess inventory, Vendor is solely responsible for all arrangements and costs associated with picking up excess inventory from the DPI Warehouse. DPI will hold inventory for return up to fourteen (14) days from the date it was received. If inventory is not removed from the Warehouse with the fourteen (14) day period, DPI may, in its sole discretion, dispose of any such Product, and assess a storage fee of \$50 per pallet plus any additional costs associated with the removal of over-shipped inventory. Storage fees and removal cost will be charged back to the Vendor.
6. In order to meet Retailer service level expectations, DPI may be required to perform Product transfers to balance inventory across our warehouses. Vendor shall be responsible for the cost associated with such transfer along with a product transfer processing fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
7. In the event that a Retailer need for acceptable shelf facing efficiencies requires DPI warehouse to cut a Vendor’s Product case to meet the Retailer need, Vendor will be charged a cut case fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
8. Any product that that fails to meet DPI’s performance guarantee will be considered for a Return to Vendor. Any item that does not perform at the level of 2 cases per week for a standard item, 3 units per week for a single pick or cut case item, or unsold shippers may be considered for discontinuation by DPI with Vendor being fully responsible for all inventory remaining in the DPI warehouse. Return to Vendor (RTV) arrangements may be coordinated with the DPI Buyer with Vendor bearing all costs associated with the RTV including landed product cost, return freight, and disposition fees.

D. Vendor Returns

Vendor returns must be processed and picked up within 14 days from notice and will be disposed of if not picked up 30 days after notice date. Product not picked up within 14 days will be assessed a \$50 per pallet storage fee as well as an additional \$25 per pallet fee for each week beyond the 14 day term until product is picked up by Vendor or disposed of by DPI. DPI will determine the disposal of unprocessed products and vendor will be invoiced for the landed product cost, staging and/or disposal services required, plus a disposition fee in accordance with the DPI Administrative Fee Schedule Exhibit A.

E. Product Handling

1. Refrigerated, frozen and ice cream Products (collectively, “Temperature Sensitive Products”) will be transported and delivered using appropriate climate control measures, with temperature levels not to exceed maximum product temperatures of 40°F for refrigerated Products, 0°F for frozen Products (excluding ice cream), and -15°F for ice cream Products. For the purposes of this provision, ice cream Products include frozen confections and novelties.
2. Upon delivery of Temperature Sensitive Products, Vendor or Vendor’s carrier must provide DPI with appropriate documentation, including documentation detailing the climate control or thermal readings for the Temperature Sensitive Products throughout the transportation route from pick-up to delivery. Does not apply to FOB Origin.
3. If the documentation shows that the environment of the Temperature Sensitive Products exceeded the maximum temperature at any time prior to delivery, DPI may, at its sole discretion, reject the Products as non-conforming. Upon such rejection, the non-conforming Products shall become the sole responsibility of Vendor. DPI shall have no obligation to pay for the Products or any costs associated therein. If Temperature Sensitive Products are delivered without the required documentation, DPI may, at its sole discretion, accept the delivery and such acceptance will not excuse Vendor from any indemnity obligations to DPI. Does not apply to FOB Origin.
4. DPI may inspect any Temperature Sensitive Products up to seventy-two (72) hours from receipt of

such goods to determine quality and salability. If DPI determines that the Temperature Sensitive Products are defective, DPI shall hold the Products for a maximum of seven (7) days for inspection. At the end of the 7-day period, unless directed by Vendor to return the Products, DPI shall dispose of the Product and charge back Vendor for the cost of the Products and all costs associated with its disposal. All returns will be at Vendor's sole cost and risk of loss.

**F. Shelf Life Policy**

1. Vendor must provide DPI with the total Products shelf life, in days, at the time of production.
2. All open coded Products must be open coded with a conspicuous "sell by" or "use by" date. The date must be stamped on both the shipping case and on the Products. All closed coded Products must show the actual expiration date on the shipping documents or packing list.
3. Vendor shall ship Products so that it has a minimum 67% of its shelf life remaining when it is received by DPI. If Products are manufactured with greater than 365 days of shelf life, Vendor shall ship the lesser of 67% or 1 year remaining shelf life.
4. DPI will assess an administrative fee per the Administrative Fee Schedule on all non-compliant cases received. This administrative fee will be waived with participation in the Administrative Efficiencies Allowance (AEA) program as indicated in Exhibit A. Non-compliant cases received are defined as:
  - a) "Short Dated" - Product is received with less than the required shelf life remaining that DPI requires.
  - b) "Out of Rotation" - Product is received with shelf life that is not in code date alignment with previously received inventory.
  - c) "Long Dated" - Product is received with product shelf life greater than total shelf life days provided for system entry.
5. When Vendor is aware that non-compliant shelf life product will be shipped in order to fulfill an open PO, Vendor is required to notify DPI 72 hours prior to shipment. DPI has the discretion to accept or reject non-compliant products.
6. DPI buyers will notify Vendors of non-compliant Products and take one of the following actions based on the specific situation. DPI reserves the right to refuse Products delivery at their discretion.
  - a) Arrange for pick up and replacement of non-compliant Products at the Vendors expense.
  - b) Accept additional marketing support to increase sale and reduce potential spoils.
  - c) Agree with supplier to allow for normal inventory depletion.
7. Any products that are warehouse spoils of non-compliant Products will be deducted from the Vendor at the landed cost to DPI.

**G. Disposition**

1. In the event DPI is required to utilize DPI staff or lumper assistance to prepare Vendor inventory for return or disposal, Vendor will be invoiced for the landed product cost, staging and/or disposal services required, plus a disposition fee in accordance with the DPI Administrative Fee Schedule Exhibit A.
2. Removal reasons may include, but are not limited to; expiration, damage, slow/dead inventory, returns (RTV) and retailer discontinuation of exclusive product.

**7. Web Portal**

- A. When DPI Provides access to Vendor, Vendor shall use DPI's "Web Portal" for all data entry regarding
1. New Item Set up
  2. Purchase Orders, Pricing, and Allowances
  3. Promotions
  4. Cost Changes

**8. California Proposition 65**

- A. Pursuant to California Health and Safety Code section 25249.5 et seq. (Prop 65) and its enabling regulations at 27 CCR § 25600.2(b), Vendor is responsible for determining whether any Products Vendor sells to DPI require(s) a Proposition 65 warning, what warning language is required and how the warning is conveyed for such Products in order to ensure warning is in compliance with Prop 65. DPI will not be responsible for labeling Products or handling warning materials, including passing such warning materials on to end retail customers. It is expected that Vendor will include any necessary Prop 65 warnings on the Product packaging. In the event that a Vendor's Products requires a Prop 65 warning and a warning is not on the Product packaging but rather Vendor chooses to provide necessary Prop 65 warnings through notice and warning materials for posting at retail, DPI will not be responsible for handling warning materials or otherwise providing warning materials to retail customers. DPI will however, upon written request from Vendor, provide a list to Vendor of all California retail customers to which Vendor's Products are distributed. Vendor will be expected to provide materials directly to the California retail customers.
- B. The Vendor hereby acknowledges that it is representing and warranting whether the Vendor's Products supplied to DPI are in compliance with Prop 65. Vendor agrees to indemnify, defend and hold harmless DPI against any claims, demands, liabilities or losses, damages, and expenses related to Vendor's Products and California Proposition 65 requirements.

**9. California Safer Food Packaging and Cookware Act (AB 1200) and/or any other Jurisdictions who Enact Similar Regulations**

- A. Pursuant to the California Safer Food Packaging and Cookware Act and/or any other jurisdiction, vendor is responsible for determining whether any Products Vendor sells to DPI require(s) a California Safer Food Packaging and Cookware Act warning, what warning language is required and how the warning is conveyed for such Products in order to ensure warning is in compliance with California Safer Food Packaging and Cookware Act. DPI will not be responsible for labeling Products or handling warning materials, including passing such warning materials on to end retail customers. It is expected that Vendor will include any necessary California Safer Food Packaging and Cookware Act warnings on the Product packaging. In the event that a Vendor's Products requires a California Safer Food Packaging and Cookware Act warning and a warning is not on the Product packaging but rather Vendor chooses to provide necessary California Safer Food Packaging warnings through notice and warning materials for posting at retail, DPI will not be responsible for handling warning materials or otherwise providing warning materials to retail customers. DPI will however, upon written request from Vendor, provide a list to Vendor of all California retail customers to which Vendor's Products are distributed. Vendor will be expected to provide materials directly to the California retail customers.

California Safer Food Packaging and Cookware Act prohibits the manufacture, sale, or distribution of per fluorinated alkyl substance (or PFAS) in food packaging applications. In addition, A.B. 1200 requires that manufacturers of "cookware" sold in the state list the presence of chemicals on the label of the product if it contains one of over 2,000 intentionally added chemicals.

*PFAS Food Packaging Prohibition* – The law specifically prohibits the sale of food packaging that is comprised of paper, paperboard, or other fibrous materials and that contains "regulated PFAS"

*Cookware Labeling Disclosure* –Manufacturers of cookware include a label with their product that discloses the presence of any chemicals that might have been intentionally added to the product and that are a "designated chemical." Cookware is defined very broadly to include "durable houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuffs, or beverages. Cookware includes pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils."

- B. The Vendor hereby acknowledges that it is representing and warranting whether the Vendor's Products supplied to DPI are in compliance with the California Safer Food Packaging and Cookware Act. Vendor agrees to indemnify, defend and hold harmless DPI against any claims, demands, liabilities or losses, damages, and expenses related to Vendor's Products and California Safer Food Packaging and Cookware Act requirements.

*Misleading Advertising* - Prohibits misleading advertising on cookware packaging about unsafe chemicals in cookware. For example, claims that a product is free of a specific hazardous chemical when other chemicals from the same class are present.

**10. Supplier Diversity Initiative**

- A. It is the policy of DPI to offer minority and women owned businesses the opportunity to compete on an equal basis with all other suppliers.
- B. Vendor must provide proof of certification by a national or regional Diversity Supplier Development Council to be so listed.



**EXHIBIT D**

**MARKETING SOLUTIONS PROGRAM**

The *DPI Specialty Foods Marketing Solutions Program* gives our partnered suppliers access to national marketing activities at a cost savings versus non-partnered suppliers.

Points are awarded based on 1% Marketing Solutions off invoice allowance at a \$1 = 1 pt. value. Participants may use their awarded points on a menu selection of national promotional and marketing activities.

Please contact the National Vendor Relations Team at [DPI-VendorRelations@dpispecialtyfoods.com](mailto:DPI-VendorRelations@dpispecialtyfoods.com) for more information or select Participant below to join the program.

*Initial to indicate selection*

1. **MARKETING SOLUTIONS PROGRAM (1%)**                     **PARTICIPANT**    **DECLINED**

<p><i>PROGRAM NOTES:</i></p>
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EXHIBIT E

**DPI - WAREHOUSE SPOILS ALLOWANCE PROGRAM**

1. DPI will accept a suitable off-invoice spoils allowance in lieu of a warehouse full spoils guarantee.
2. Allowance only covers warehouse product and will be reviewed.
3. All Products are subject to full reclaim as required by individual Retail Customer policies. Retailer product loss claims including Retailer required swell allowances will be passed through to the Vendor.
4. Recall Product is not covered by this allowance.

*Percentage*

Warehouse Spoils Allowance Percentage: \_\_\_\_\_%

PROGRAM NOTES: