1. Definitions. “Agreement” means a written agreement or agreements, if any, signed by PetSmart and Vendor regarding the purchase of Products. “Business Terms” means the Agreement and the PO, collectively and individually. “PetSmart” means PetSmart LLC, or any of its affiliates or wholly-owned subsidiaries. “PetSmart Documents” means the Business Terms and any related policies or documentation that PetSmart provides Vendor from time to time or that is available to Vendor on PetSmart’s website. “PO” means a purchase order, replenishment and Condition for Purchase Orders and any schedules attached to such PO. “Product(s)” means the goods (including accessories, collectively and individually) provided by Vendor under a PO, together with related packaging, labeling, documentation, transportation and anything else furnished by Vendor with respect to such goods, and any and all deliverables provided by Vendor under a PO, as provided or ordered. “Vendor” means the person, company or entity to which the PO has been issued, and its related entities, affiliates, agents, representatives and subcontractors.

2. Agreement for Purchase of Products. All purchases of Products by PetSmart will be governed by the Business Terms and are subject to the PetSmart Documents. In the event of a conflict between the PO and an Agreement, the Agreement will control. (For clarity, if the PO does not conflict with the Agreement but does contain additional or more specific terms or provisions than the Agreement, such additional or more specific terms or provisions will continue to apply to Vendors.) If the parties have not executed an Agreement, the PO will control. The Business Terms constitute the complete and final written agreement between PetSmart and Vendor with respect to the PO, and supersede all other agreements and understandings between the parties regarding the Products. No waiver, modification, or amendment of the Business Terms will be valid unless in writing and signed by authorized representatives of both parties, subject to Section 9. All terms of any purchase order or similar document provided by Vendor, including, but not limited to, any pre-printed terms thereon or any terms that appear on any packaging through Vendor’s websites or apps, that are inconsistent with, add to, or conflict with the Business Terms, will be null and void and of no legal force or effect. In addition, neither acceptance by nor delivery to PetSmart of all or part of the Products ordered, nor payment therefor, will constitute acceptance by PetSmart of any such different or additional terms and conditions that may be proffered, by or on behalf of, the other party, whether prior, concurrent or subsequent to PetSmart’s assent to such terms and conditions. Any written indication of acceptance of the Business Terms, commencement of any work or the performance or shipment of conforming or non-conforming Products is binding on PetSmart as same is provided or ordered. Vendor’s PO shall constitute acceptance by Vendor of the PO and all the Business Terms and the PetSmart Documents.

3. No Purchase Requirement. Except as may be set forth in the description of Products purchased on the PO, PetSmart does not commit or guarantee the purchase of any Products from Vendor, including any minimum or maximum quantity of Products. Vendor is not an employee, agent, or representative of PetSmart (“Projections”) are provided by PetSmart to Vendor or otherwise discussed between the parties, they are purely for planning purposes and are shared for Vendor’s convenience. Projections are not a commitment for future buys and shall not be binding upon PetSmart. PetSmart is not liable for any amounts incurred based on a vendor’s reliance on such Projections. No proposal by Vendor shall be accepted or deemed accepted by PetSmart unless and until PetSmart accepts the proposal in a written P.O.

4. Delivery and Force Majeure: Inspection, Title and Risk of Loss. Vendor will deliver the Product in accordance with the PetSmart Documents. For Products delivered by Vendor, the risk of loss shall pass from Vendor to PetSmart F.O.B. point of origin and title to the Products will transfer to PetSmart F.O.B. point of origin. For Products shipped by Vendor to a specific destination, title shall not be transferred to PetSmart upon customs clearance of the Products at the port of entry in the country of final destination (“Customs Clearance”). For Products for which PetSmart is not the importer of record, title and risk of loss shall transfer to PetSmart F.O.B. point of origin. Delivery of Products is subject to the risk of loss until such time as the risk of loss is not specified in the PO, such destination shall be deemed to be the PetSmart distribution center or retail store where such Products are to be delivered. Notwithstanding the foregoing, PetSmart may at its own option take delivery of all or any part of the Products at Vendor’s facility. Time of delivery or performance is of the essence of the agreements, and PetSmart’s right to reject or reinspect any Products or part thereof shall only be exercised if there is an inability to manufacture or ship that Vendor cannot control. Vendor will not, however, be liable for any non-performance or delay in performance caused solely by a war, insurrection, act of God or public enemy, if Vendor immediately notifies PetSmart of the event and uses PetSmart’s detailed description of the non-performance or delay that will cause the Products to be delayed. PetSmart will have 10 days from the date such notice is given to cure the non-performance or delay. Vendor will protect the Products from moisture and weather. PetSmart will have the right to inspect the Product upon receipt, notwithstanding any payments or acceptance of previously shipped Products, and will, within a reasonable time, notify Vendor of any claim relating to condition, quality, shortages, non-conformance or grade of the Product. PetSmart’s inspection or failure to inspect will not constitute waiver of any of Vendor’s obligations hereunder, and Vendor’s failure to inspect will not deprive Vendor of any claim for error or loss. Vendor will defend and hold harmless PetSmart from and against all loss, cost, or expense occasioned by or occasioned as a result of Vendor’s failure to ship Products hereunder in accordance with the Business Terms. PetSmart will bear the risk of loss of all Products until they pass to PetSmart only upon delivery to the specified destination. Vendor will reimburse PetSmart for any costs, damage or expense incurred by PetSmart arising from the sale by PetSmart of any Product that does not conform to Vendor’s warranties and the PetSmart Documents.

5. Price. Price includes taxes and duties as adjusted by law, which are included in the PO (includes (i) all taxes and duties of any kind that Vendor is required to pay with respect to the Products (including applicable customs duties), and (ii) all charges for packaging, transportation, storage and insurance. Vendor will submit an invoice to PetSmart for Products delivered to PetSmart upon delivery or otherwise in accordance with the PetSmart Documents. Such invoice will reference the applicable PO. Vendor warrants that the prices set forth in the PO are not higher than the lowest prices charged by Vendor to any other customer for the Products. Except as provided in an applicable PO, PetSmart will not be required to pay any late charge, interest, finance charge or similar charge, on the individual document for the Products. “PetSmart Documents” means the Business Terms and any related policies or documentation that PetSmart provides Vendor from time to time or that is available to Vendor on PetSmart’s website.

6. Payment Terms. Payment terms, including discount periods, will be seventy (70) days from the latest of (i) the scheduled date for delivery or performance; (ii) the actual date of performance or delivery of conforming Products; and (iii) the date of Vendors order (if Vendor is charged a discount unless otherwise charged to Vendor). Unless the PO specifies otherwise, a sales allowance (deduction) of two percent (2.0%) for Products classified by PetSmart as “hard-goods,” two and one-half percent (2.5%) for Products classified by PetSmart as “specialty,” and one and one-half percent (1.5%) for Products classified by PetSmart as “consumables” shall be applied to each PO. PetSmart shall be entitled to set off any amounts owed from Vendor to PetSmart against any amounts owed from PetSmart to Vendor under the Business Terms. Any payments owing from Vendor to PetSmart that are not timely paid shall be subject to interest at a rate of five percent (5.0%) A.P.R. (or, if lower, the maximum amount permitted by law).

7. Excess, Installment, and Early Deliveries. If Vendor delivers more Products than PetSmart ordered, then unless PetSmart agrees otherwise in writing, PetSmart will not have to pay for the excess. Unless PetSmart agrees otherwise in writing, Vendor will deliver all of the Products in a single delivery and not in installments. PetSmart’s acceptance of a delivery containing less than the required quantity of Products will not relieve Vendor of its obligation to deliver the balance of the ordered Products in accordance with the PO. If Vendor delivers the Products before the scheduled delivery date, PetSmart may, at Vendor’s expense and risk, either store them or return them to Vendor. PetSmart’s acceptance of an early delivery will not change the payment terms.

8. Representations and Warranties about Vendor. Vendor represents and warrants to PetSmart that (i) Vendor has no existing experience, personnel, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Business Terms, (ii) the Business Terms are the valid and binding obligations of Vendor, (iii) Vendor is in compliance with all applicable laws, (iv) Vendor is not engaged in any business activity, (v) Vendor has no pending legal proceedings, (vi) Vendor has not been convicted of any crime in the last five years, (vii) Vendor is not subject to any administrative orders, judgments or decrees governing the Products, including without limitation, their manufacture, packaging, pricing, labeling, sale, use, transportation, importation or exportation, including, without limitation, California’s Proposition 65 and other labeling, rules, regulations, standards and directives, and other equivalent laws in any other jurisdiction, (viii) Vendor is not prohibited from doing business in any jurisdiction and (ix) the Products and all components of the Products are not and will not be free from defects in design, workmanship, materials and hazards to life, animal or property; (c) conform to any warranty, description, sample, data, drawing, representation, specification or documentation provided to PetSmart or set forth in the PetSmart Documents; (d) be suitable and fit for their intended purpose; (e) not infringe on or encroach upon any other party’s personal, contractual or property rights, including without limitation, patents, trademarks, trade names, copyrights, rights of privacy, trade secrets and/or other intellectual property rights. Further, Vendor represents and warrants that it is not subject to or bound by any agreement that will or may be violated by the provision of the Products as provided in the applicable PO. In addition to the representations and warranties herein, Vendor assigns to PetSmart any manufacturer’s indemnities and warranties (both express and implied). Upon PetSmart’s request, Vendor shall give PetSmart certificates of compliance with applicable laws, rules, regulations, standards, orders or directives. Vendor’s warranties extend to future performance under a PO within 12 months of delivery. Vendor shall also make available suitable documentation, samples, acceptance, and payment. Vendor will deliver PetSmart’s Supplier Code of Conduct in connection with Product delivery or performance of a PO, which Supplier Code of Conduct is available at www.petsmart.com.

9. Changes. Notwithstanding Section 2 herein, PetSmart may at any time, by written notice to Vendor, change the (i) size, design or colors of the Products, (ii) designs or drawings of, or specifications for, the Products, (iii) time or place of delivery or performance, (iii) method of packing or shipment, or (iv) the quantity or extent of the Products. If this causes a change in Vendor’s cost or time of performance, PetSmart will consider an equitable adjustment in the price or time for delivery or performance, or both, if Vendor gives PetSmart a written request justifying an adjustment within 30 days after receiving said request. If PetSmart fails to make payment within 10 days of receipt of said request, PetSmart may withdraw the change to the PO or Vendor may decline to provide the Products subject to the change.

10. PetSmart’s Rights. Without limiting other rights and remedies available to it, PetSmart may, at its option, determine, in its sole discretion, to recall, give public notice of hazard or defect associated with, withdraw from its product, or otherwise deal with, the Products in its discretion. Vendor will, upon PetSmart’s request, make available or deliver to PetSmart upon demand any, or part of, the Products. Vendor will notify PetSmart of any claim with respect to the Products and any Products and if any Products are returned to PetSmart due to any defect, PetSmart may, at its option, repair or replace the Products and charge Vendor with the expense. In addition to PetSmart’s rights set out in the Business Terms, PetSmart has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by PetSmart. PetSmart will not lose any right just because it does not exercise it. PetSmart will have the full statutory period of limitations to bring
any action arising out of PetSmart's agreement with Vendor. A reasonable time for PetSmart to notify Vendor of any breach is not less than two years from when PetSmart discovers the breach.

11. Work on Premises. If the PO includes the performance of services or delivery or installation of Products by Vendor, and involves operations by Vendor's employees or subcontractors to comply with all fire prevention and safety rules and regulations in force at the premises and required maintenance, repair and other maintenance duties required by the terms of the PO, Vendor shall ensure that: (a) all employees or subcontractors and upon completion promptly remove all of Vendor's equipment and surplus materials; and (b) reimburse PetSmart for all reasonable costs and expenses incurred by PetSmart for repairs completed by PetSmart or its assignee. Vendor damages any equipment or property or its employees, fees or costs caused by any portion of Vendor's or its subcontractors' equipment during or resulting from the delivery or performance of the Products by Vendor. Under no circumstances will Vendor conduct or permit any hazardous activity or handling any hazardous materials at PetSmart's or its customers' premises without first coordinating such activity with PetSmart.

12. Services. If the PO includes the performance of services, (i) Vendor is an independent contractor, and neither Vendor nor any of Vendor's employees or agents will be considered agents or employees of PetSmart; and (ii) Vendor will furnish, at Vendor's expense, all labor, materials, equipment, transportation, facilities and other items necessary to perform such services. Vendor represents and warrants that any of its employees or agents (including subcontractors) deployed in performing any such services will at all times be lawfully engaged under applicable US immigration laws and regulations.

13. Ownership of Work. Unless otherwise agreed to in writing by PetSmart, all documents, materials, designs, programs, code, software, specifications, drafts, advice, ideas, suggestions and any other pertinent data, including any derivatives thereof, in whatever form or media, specifically prepared for or produced for PetSmart ("Work") will become the exclusive property of PetSmart in perpetuity, throughout the universe, in all languages, formats and media, whether now known or hereafter devised or invented. All Work, to the extent possible, be deemed a "work made for hire" within the meaning of the US Copyright Act and all intellectual property rights related to such Work will vest in and be owned by PetSmart. To the extent that title to any such Work may not, by operation of law, vest in PetSmart, Vendor irrevocably and exclusively assigns all rights, title and interest in the Work to PetSmart. In addition to all other remedies, if the above work has been expressly granted by PetSmart in a purchase of the Products. Vendor will take the same steps to develop and use the work independently of the business terms and with PetSmart's assistance or contributions ("Vendor's IP"), and no right is granted to PetSmart with respect to Vendor's IP, except that Vendor grants PetSmart a license to any and all of Vendor's IP embedded in or required for a product of the PO. Such license is non-exclusive, irrevocable, perpetual, and non-transferable.

14. Customs-Trade Partnership Against Terrorism. PetSmart participates in the US Customs-Trade Partnership Against Terrorism (C-TPAT) and is committed to engaging providers, vendors and consultants who have policies and procedures ensuring supply chain security. PetSmart requires that all its providers, vendors and consultants make reasonable efforts to have a security program that is in accordance with C-TPAT's minimum security requirements.

15. Indemnity. Vendor will indemnify, defend and hold harmless PetSmart, its directors, officers, employees, shareholders, agents, subsidiaries, affiliates and representatives ("Indemnities") from and against any and all threatened, pending or actual claims, losses, liabilities, damages, costs or expenses (including attorneys’ fees and experts, fees or costs through all appeals) of any nature whatsoever and whether arising prior to, or after the commencement or termination of the Business Terms ("Losses"), arising out of or related to: (a) the Products, including, but not limited to, their manufacturing, packaging, pricing, labeling, sale or use, or any infringement by the Products of third-party intellectual property rights; (i) breach of any provision of any of the PetSmart Documents; (c) any claim or threatened claim for personal injury, death or property damage or loss of any nature whatsoever arising from or related to any Product; (d) Vendor's violation of any applicable laws or regulations; or (e) any breach by Vendor of any of its obligations or warranties in favor of PetSmart. Vendor will, at its sole cost and expense, the Indemnities in any action or proceeding arising out of any such Losses by counsel reasonably acceptable to Indemnities and will promptly pay all costs and expenses arising in connection with such defense including attorneys’ fees and expert witnesses’ fees through all appeals.

16. Insurance. Vendor will maintain, during the term of the Business Terms and for at least five years thereafter (or if no such term is specified for at least three years after the date of the PO), the following types and amounts of insurance, with insurers with an A.M. Best rating of at least A- (Excellent), FSC VII, and authorized to conduct business in the United States and Canada: (a) a commercial general liability policy with limits not less than $2,000,000 per occurrence and $4,000,000 aggregate including, but not limited to, coverage for bodily injury, property damage, contractual liability and products liability/completed operations; (b) an automobile liability policy with limits not less than $3,000,000 combined single limit; (c) workers' compensation insurance in the benefit amounts required by applicable law and an employer's liability policy with limits not less than $1,000,000 for services arising out of or related to the PO. If the PO is subject to the transactions contemplated thereby, each of the parties agrees to maintain insurance for all applicable acts and omissions occurring under any similar law. (d) general liability policies covering all products sold under a PO, a professional liability or errors and omissions policy with limits not less than $2,000,000 per occurrence and $5,000,000 aggregate; and (e) additional to the policies above, a commercial umbrella or excess liability policy with limits not less than $2,000,000 per occurrence. Notwithstanding the foregoing, Vendor may request to acquire additional or different insurance types or coverage amounts to the extent commercially reasonable in order to protect both PetSmart and Vendor from any and all claims and liabilities arising from or related to the PO and the goods or services provided under a PO. Such policies shall be issued by insurers that are reasonably satisfactory to PetSmart. Vendor's policies will provide a waiver of subrogation in favor of PetSmart. Upon PetSmart's written request, Vendor will name PetSmart as an additional insured on the policies on a primary and noncontributory basis. Vendor's policies will provide a waiver of subrogation in favor of PetSmart. Within 10 days after such request, Vendor will provide PetSmart with certificates of insurance for the policies required hereunder and send such certificates to certificates@petsmart.com. The insurance coverage provided for herein will not act to limit Vendor's liability under the Business Terms.

17. Confidentiality. As a result of its dealings with PetSmart, Vendor may have access to PetSmart's Confidential Information. "Confidential Information" is non-public information that, by its nature, ought to be treated as proprietary and confidential or that a reasonable person would conclude is confidential, which is disclosed by PetSmart, or its subcontractors or agents, to Vendor, orally, electronically or in tangible form. Vendor will not, without the written consent of PetSmart, its successors or assignees, disclose any Confidential Information to any person, firm, corporation, or other entity for any purpose whatsoever or use such information for any purpose not provided for in the PetSmart Documents, for a period of two years after it is disclosed. If there is a breach of this Section (either actual or threatened) by Vendor, PetSmart's remedies at law will be inadequate. Therefore PetSmart will have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and PetSmart's rights and remedies will be cumulative.

18. Publicity/Use of PetSmart Name. Vendor will acquire no right to use, and will not use, the name “PetSmart” (either alone or in conjunction with or as part of any other word or name) or any other name, mark, logo, design, product designations or other intellectual property of PetSmart or any of its related, affiliated or subsidiary companies: (i) in any advertising, publicity or promotion; (ii) to express or to imply any endorsement by PetSmart of Vendor's products, services or business; or (iii) in any other manner whatsoever (whether or not similar to uses prohibited by [i] and [ii] above) without PetSmart’s express prior written consent, which may be withheld in its sole discretion. The terms of this paragraph will survive the expiration or termination of the Business Terms.

19. Remedies; Set-Off. In addition to the rights and remedies provided in the Business Terms, each party has all the rights and remedies available to it under the Uniform Commercial Code as adopted in the State of Arizona; provided, however, that Vendor waives all PetSmart rights to claim punitive or exemplary, indirect, incidental, special or consequential damages, lost profits or loss of opportunity damages. The exercise of any of the rights and remedies in the Business Terms will be without prejudice to the right of PetSmart to exercise any other right or remedy provided in the Business Terms or at law or in equity. All payments made to PetSmart by Vendor pursuant to the Business Terms are subject to set-off, deduction or offset by PetSmart of all sums due to PetSmart by Vendor under the Business Terms.

20. Governing Law/Venue/Jury Trial Waiver. PetSmart and Vendor agree that the relationship between each of them and PetSmart with respect to the PO and the use of the PO, as well as all questions arising from or related to the PO, including the construction, interpretation and effect of the PO and of any of the transactions contemplated thereby, shall be governed by the laws of the State of Arizona without regard to principles of conflicts of laws. In any action or proceeding between any of the parties arising out of or relating to the PetSmart Documents (or any of the transactions contemplated thereby), each of the parties agrees to submit to the exclusive jurisdiction and venue of the state and federal courts located in Maricopa County, Arizona; and agrees that all claims in respect of such action or proceeding will be exclusively heard by such courts. EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, ANY RIGHT TO TRIAL BY JURY REGARDING ANY SUCH CLAIM.

21. Data Security. Vendor shall maintain and develop appropriate data security procedures and other safeguards against the destruction, corruption, loss or alteration of PetSmart’s Confidential Information, and to prevent access, intrusion, alteration or other interference by any unauthorized third parties of the same, that are no less rigorous than those maintained by Vendor for its own information or the information of its customers in a similar nature if more rigorous, and (ii) accepted industry practices that are in compliance with all Applicable Laws. If PetSmart, in its sole discretion, requests or requires Vendor to access any electronic database or online portal system owned and/or operated by PetSmart, Vendor hereby agrees it shall submit to, and successfully complete PetSmart’s screening and/or testing requirements regarding the protection of online or electronic data.