

**Changes tracked  
against 1986  
“Blue Agreement”:**

## DEFINITIONS

(a) BAKERY — refers to PEPPERIDGE FARM, INCORPORATED, the grantor of ~~[this]~~the Distributorship, a Connecticut corporation having its principal office in Norwalk, Connecticut.

(b) CONSIGNEE — refers to the grantee of this Distributorship identified on the cover page hereof, who is an independent contractor with the knowledge, experience, facilities, equipment, resources and ability to provide the service established in this Agreement.

(c) TERRITORY — refers to the territory described in Schedule A hereto.

(d) CONSIGNED PRODUCTS — refers to those products listed in Schedule B hereto (subject to modification per Paragraph 10) but only when packaged or wrapped in retail packaging under the brand name “Pepperidge Farm” and sold or intended to be sold to retail stores as fresh (i.e. not preserved or stale), ~~[fully-cooked,-]~~first quality (i.e. not Seconds) merchandise and does not include (~~[a]~~1) any of such products sold, or intended to be sold~~[,]~~ to retail stores, frozen, refrigerated, canned, or otherwise preserved, (~~[b]~~2) any of such products sold, or intended to be sold, to retail stores in a raw or uncooked state, (~~[e]~~3) any of such products sold, or intended to be sold, to retail stores in bulk for resale by such retail stores at an in-store~~[-]~~ bakery or at a food-service counter or food-service section located within such retail store, (~~[d]~~4) Stale Products, (~~[e]~~5) Seconds, (~~[f]~~6) merchandise of others containing Consigned Products as components~~[-or]~~, (~~[g]~~7) any of such products packaged or wrapped in food-service or other non-retail packaging or (8) any of such products packaged, wrapped or sold under any brand name other than “Pepperidge Farm.”

(e) STALE PRODUCTS — refers to Consigned Products whose shelf life has expired, as determined by Bakery’s stale policy existing from time to time.

(f) SECONDS — refers to Consigned Products which do not meet the high standards required by Bakery for distribution in the ordinary manner and thus are deemed by Bakery, in its sole discretion, to be unsuitable for that purpose.

(g) DISTRIBUTION OR DISTRIBUTE — refers to the sale and delivery of Consigned Products to retail stores within the Territory and to such hotels, restaurants, etc., as may be authorized by Bakery per Paragraph 9.

(h) BULLETIN PRICES — refers to the prices for Consigned Products charged by Bakery and published from time to~~[,]~~ time.

(i) CHAIN — refers to any person, firm, corporation or other legal entity that owns or operates three or more retail stores.

(j) DISTRIBUTORSHIP — refers to the distribution rights described in, and established under, this Agreement.

## TERMS

1. EXCLUSIVENESS OF DISTRIBUTORSHIP. Consignee will have the exclusive right to distribute Consigned Products to retail stores within the Territory, and Bakery will not sell or deliver or authorize any others to sell or deliver Consigned Products to retail stores (except for the ~~in~~hi-store bakeries, food-service counters and food-service sections located in retail stores) within the Territory except in connection with temporary sales programs and except for sales to direct customers pursuant to orders solicited by Consignee under Paragraph 3 (b); provided, however, that Bakery will have the exclusive right to distribute Consigned Products to retail facilities owned or operated by Bakery or by any corporation controlled by Bakery. The terms of this Paragraph are subject, however, to the terms of Paragraphs 6, 7, and 9.

2. QUANTITIES CONSIGNED. Bakery will consign and deliver to Consignee at such locations as shall, from time to time, be designated by Bakery, and Consignee will accept sufficient quantities of Consigned Products to maintain at all times an adequate and fresh supply thereof in all retail stores in the Territory which request such products and whose accounts are not demonstrably unprofitable; provided, however, Bakery reserves the right to allocate its products as nearly proportionately as practicable if the overall demand for its products exceeds its production. Consignee shall hold and care for all Consigned ~~Products~~as Products as the sole and exclusive property of Bakery. Title to all Consigned Products shall be vested in, subject to, and under the control of Bakery until delivered by Consignee to a purchaser. Consignee shall not encumber or grant any security interest in or lien on, or by action or inaction cause or allow any encumbrance, security interest or lien to be imposed upon, the Consigned Products.

### 3. PROCEEDS AND RECORDS OF SALE.

(a) Except as provided in subparagraph (b), Consigned Products shall be consigned to Consignee at Bulletin Prices, less the percentage specified in Schedule B, for sale and delivery to retail stores at such prices as Consignee may determine. The percentage set forth in Schedule B shall not be reduced for the duration of this Agreement. Except in the case of temporary promotions or programs, Bakery will provide two weeks' notice to Consignee of across-the-board Bulletin Price changes.

(b) Bakery ~~will~~may bill directly ~~all-chains~~any Chains and military commissaries that have requested such direct billing or that request it in the future. Such directly billed stores in the Territory will be direct customers of Bakery, and Consignee will solicit sales from them and receive product for delivery to them on Bakery's behalf at Bulletin Prices. Bakery assumes all credit risks with respect to ~~chains~~Chains and military commissaries which ~~have requested~~receive such direct billing. The funds owed by such ~~chains~~Chains and military commissaries as a result of the Consigned Products delivered are accounts receivable of, and debts payable to, Bakery and are not the property of Consignee. Consignee shall have the exclusive right to perform the service of delivery of Consigned Products to such customers of Bakery and Bakery shall not effect such delivery except through Consignee,[-] subject to the provisions of Paragraphs 1, 6, 7, and 9. For the performance of his/her/its services of solicitation and delivery under this subparagraph (b), Consignee, if he/she/it shall have made prompt and timely delivery of all charge tickets as required by subparagraph (d) (2), shall be paid a

percentage of net proceeds payable to Bakery by the direct billing customers, such percentage to be calculated at the rate specified in Schedule B.

(c) Bakery [~~will~~ may] from time to time extend credit to Consignee for Consigned Products to be sold to retail stores on credit extended by Consignee; provided Bakery has approved in advance the stores to receive such credit and the amount and terms thereof. Notwithstanding the foregoing, any credit extended by Consignee shall be at Consignee's risk.

(d)

(1) ~~[[~~[-] Consignee shall pay promptly each week on the day specified by Bakery for all Consigned Products sold and delivered by Consignee during the preceding week, (a) less any deductions authorized in Paragraph 24 and (b) less any amounts which would be otherwise due on such sales as to which Bakery shall have extended credit to Consignee under (~~[e]~~ b) above, plus any amounts becoming due during such week under the terms of credit extended during any previous week.

(2) Consignee shall promptly deliver to Bakery on such days as Bakery may specify all charge tickets for all deliveries of Consigned Products to direct customers of Bakery for direct billing by Bakery.

(e) For any store in Consignee's Territory that uses scan-based trading (SBT), under which a sale to the store does not occur and commissions are not earned until items are scanned at the consumer point of purchase, Bakery will provide Consignee with an annual "shrink" allowance of 1% (one percent). Shrink refers to unaccounted for Consigned Products delivered to an SBT store, calculated as a percentage of total inventory. Total inventory equals beginning inventory plus net deliveries to the store (i.e., deliveries less returns). Shrink equals: total inventory, less scan-based sales, less ending inventory (after a physical inventory, if necessary). Bakery shall have the right to charge back Consignee for the wholesale cost of any shrink in excess of the 1% (one percent) allowance, less the percentage specified in Schedule B. If shrink at a store that uses SBT exceeds 3% (three percent) in any year, or exceeds 1% (one percent) in two of any three consecutive years, Bakery shall, upon Consignee's written request, undertake an investigation of the causes of such shrink, and to the extent it is in Bakery's opinion caused by the store's failure to take reasonable measures to prevent shrink, Bakery shall use reasonable efforts to work with the Consignee to request that the store take such measures.

(f) Upon Consignee's compliance with Bakery's stale policy, Bakery will provide Consignee with an annual stale allowance as determined under the policy but in any event no less than 3% of the total amount of Consigned Products delivered by Consignee; provided, however, that Bakery shall have the right to reduce or eliminate the stale allowance if, in Bakery's commercially reasonable judgment such adjustment is warranted by a material change in business conditions or if Pepperidge Farm determines that Consignee has materially misused the stale allowance in a manner inconsistent with the purposes of the Stale Policy. Bakery shall have the right to charge back Consignee for the wholesale cost of any stale in excess of the stale allowance, less the percentage specified

in Schedule B. Bakery shall make available to Consignee reasonable detail supporting any stale charges for which Consignee is responsible.

(g) In the event that a Chain account requires double bagged Consigned Products, Bakery shall double bag such Consigned Products at no cost to Consignee through [one year from date of Final Order]. If Bakery in its sole discretion discontinues providing double bagging after [one year from date of Final Order], Bakery shall pay Consignee an additional 2.5% of the Bulletin Price of such Consigned Product double bagged and distributed by Consignee to a retail store (net of returns). In the event Bakery, in its sole discretion, discontinues double bagging Consigned Products and Consignee, in his/her/its sole discretion, opts to discontinue distributing double-bagged Consigned Product to a retail store, Bakery shall have the exclusive right to distribute such double-bagged Consigned Product to such retail store and Consignee shall be entitled to only 5% of the Bulletin Price of such double bagged Consigned Product (net of returns). In the event that a Chain account no longer requires double bagged Consigned Products, Bakery's obligations under this subparagraph shall cease and Consignee's obligations under this Agreement will resume. For the avoidance of doubt, any retail store to which Consignee discontinues distributing double-bagged Consigned Product shall remain included in the Territory upon sale of the Territory by Consignee, as set forth in Paragraph 8, below, with the parties' rights with respect thereto governed by the terms of this Agreement.

(h) PALLET ORDERS. Bakery shall consider any data and/or other information provided by Consignee that Consignee believes demonstrates that a customer within Consignee's exclusive territory has engaged in inefficient or otherwise excessive pallet orders. Upon review of such data and/or information, if Bakery concludes that such customer's pallet ordering practices are inefficient or otherwise excessive, Bakery agrees to use reasonable efforts to work with such customers in an effort to achieve more appropriate pallet ordering practices in the future.

(i) Consignee will keep such records of Consigned Products received and sales and deliveries made as Bakery may from[.] time to time reasonably request; Bakery may inspect such records and Consigned Products at such times as mutually agreed to by Consignee and Bakery[ ~~may select. Without limiting the generality of the foregoing,~~]. Consignee agrees that Bakery may take physical inventory of Consigned Products in Consignee's possession [~~whenever and as often as Bakery deems advisable~~]up to two times per calendar year, or more often in the event of exceptional circumstances, and that Consignee will keep such records of his/her/its operation and will furnish Bakery such copies thereof as Bakery may reasonably require. Except as may be required by any customer, Consignee shall have no obligation at any time to create "service only" tickets reflecting visits to stores by Consignee during which deliveries of Consigned Product were not made.

4. DISTRIBUTION [~~EFFORTS. Consignee will use his/her best efforts to realize the full sales potential of the Territory for Consigned Products. To this end,~~]RESULTS. Consignee will (a) actively solicit all retail stores in the Territory whose accounts can [~~be~~]by profitably handled[.]; (b) maintain at all times an adequate and fresh supply of Consigned Products in all such retail stores, [~~e) provide distribution service to all such retail stores at such~~

~~intervals and with such frequency as is necessary to realize the full sales potential thereof and to maintain an adequate and fresh supply of Consigned Products therein,]and~~ ([d]c) make available to all such retail stores all varieties of authorized Consigned Products unless it is demonstrably unprofitable to do so. Consignee may sell or distribute other products, [(e) cooperate]not competitive with [~~Bakery in the effective utilization of Bakery's advertising, sales promotion and space merchandising programs and (f) keep fully informed of Bakery's recommended policies and methods for increasing sales and improving distribution service. To this end also, Consignee shall not acquire for the purpose of distributing, or distribute or offer to distribute, any article or product which competes with the Consigned Products without the prior written consent of Bakery. Bakery may, from time to time, establish reasonable sales and/or distribution goals or quotas for Consignee and this Distributorship. Consignee shall either meet or exceed any such quotas or goals established by Bakery.~~]Consigned Products, so long as such sale or distribution does not otherwise violate any terms or conditions of this Agreement. Bakery may from time to time publish and/or make available to Consignee onboarding assistance, sales and promotion information, recommended service frequency and day of the week standards, recommended sales goals, business planning guides and assistance, business consulting via "route rides," "route consults", recommendations regarding possible route/Territory splits, Territory sales or truck additions, and/or otherwise make recommendations to Consignee regarding the services Consignee performs under this Agreement. However, Consignee shall have sole discretion, without suffering any adverse consequence, to use or not use any of the foregoing offerings as he or she or it sees fit.

A store shall be deemed to be demonstrably unprofitable in the event that, for a consecutive three-month period, the store sells less than one hundred dollars (\$100) of Bakery's bakery products each week (at wholesale costs and net of returns), despite commercially reasonable efforts by Consignee to distribute products to the store consistent with the obligations set forth in this Agreement. The \$100 threshold shall be adjusted annually based on the increase or decrease of the following: using 2018 prices as the baseline, the average year-over-year percentage increase or decrease in the wholesale price of Bakery's top 10 bakery SKUs in sales in the state of Connecticut. For example, if the average wholesale price as determined above increased by 5% over the prior year, then the applicable threshold would increase from \$100 to \$105. If Consignee does not deliver to a store that is demonstrably unprofitable, Bakery shall have the right to arrange for such service and Consignee shall receive no compensation for any product distributed to that store. For the avoidance of doubt, when Consignee does not deliver to a store that is demonstrably unprofitable, the store shall remain included in the Territory, with the parties' rights with respect thereto governed by the terms of this Agreement, upon sale of the Territory by Consignee.

Unless agreed upon with Consignee, Bakery shall not make any changes to or rearrange tags on products after they are delivered and shelved by Consignee, except that Bakery shall have the right to move product tags in the event of a chain store reset.

Consignee and Bakery acknowledge that Chain customers may require distributors to adhere to set planograms in their stores. For every Chain customer that requires such planogram adherence, Bakery will attempt, at the account level, to reach an agreement with the customer that allows a store manager and distributor to deviate from the

planogram at the store level. Bakery will only seek such an agreement if (i) there has been a complaint, at the account or the store level, about noncompliance with the planogram; and (ii) Consignee requests that Bakery seek such an agreement. Bakery will not initiate discussions with a Chain customer about such an agreement on Bakery's own initiative, including but not limited to when Bakery observes noncompliance with the planogram about which the customer has not complained. For the avoidance of doubt, Bakery shall only be required to seek such permission one time and need not seek permission again if the Chain account has already declined such permission, although (i) Bakery may choose to do so in its sole discretion, and (ii) if Bakery cannot secure that agreement from the Chain customer on a first attempt, but Consignee subsequently gets written or verbal permission from a store manager to deviate from the planogram, Bakery will take that permission to the chain account a second time to seek approval of that store-level agreement. If such approval is not given by the chain at the account level, then Consignee must adhere to the Chain account's planogram.

If Bakery observes planogram non-compliance that was not approved by the chain level account, Bakery shall have the right to send Consignee a notice of non-compliance. This notice will not state that Consignee is in breach of this Agreement, or provide a deadline to cure, nor will it be used by Bakery to take any action against the Consignee. If a Chain account or store complains to Bakery about Consignee's failure to adhere to the Chain's planogram without approval, the following will occur:

(1) If the complaint only concerns store(s) serviced by Consignee, or Consignee's agent, helper or employee, Consignee shall be in breach of this Agreement, but Bakery will not pursue any rights otherwise available to it under this Agreement until (a) Bakery issues a notice of non-compliance of the same type provided for in the paragraph immediately preceding this subsection (1) of Paragraph 4 of this Agreement, and (b) following Bakery's issues of such notice, the Chain account or store makes a further complaint;

(2) If the complaint concerns non-compliance across multiple stores, including those serviced by Consignee and by other independent distributors, Pepperidge Farm will send a notice of the complaint to all independent distributors servicing the stores at issue, including Consignee, and if, thereafter, Pepperidge Farm observes or is informed of non-compliance by Consignee, or Consignee's agent, helper or employee, Consignee shall be in breach of this Agreement and Pepperidge Farm will have all rights available under this Agreement.

Further, and except as limited by Paragraph 17 and 18, Consignee shall not be required by Bakery, and Bakery shall have no right or authority to require, Consignee to split or sell any portion of his or her or its Territory, or to add an additional truck to Consignee's Territory, as a precondition to Consignee selling any portion of Consignee's Territory. For avoidance of doubt, Consignee shall have the sole discretion to determine the manner and means by which he/she/it achieves the Distribution Results set forth in this Paragraph 4.

5. DISTRIBUTION SERVICE AND FACILITIES. Consignee will maintain efficient distribution service throughout the Territory in keeping with the established reputation

of Bakery and the high quality of its products. To this end, Consignee will (a) provide adequate equipment and, if not otherwise provided by Bakery, facilities for the receipt[~~;~~], handling and delivery of Consigned Products and the accounting, inventory and billing thereof, including, without limitation, such computer and/or other systems as may be necessary or appropriate therefor, (b) comply with all laws and regulations relating either directly or indirectly to the operation or ownership of the Distributorship, including, without limitation, all motor vehicle, food, drug, health and sanitary laws and regulations and (c) maintain such route books and other records [~~as are required by Bakery from time to time. Pursuant to the foregoing, Consignee shall provide, and shall maintain in good and proper working condition and appearance, a delivery truck, computer and such other equipment as, from time to time, shall be necessary for the operation of the Distributorship. Consignee shall maintain the general appearance and condition of such truck, computer and other equipment, as well as Consignee's appearance and deportment and that of~~ sufficient to meet his[~~/~~] or her [~~helper~~] or [~~helpers, if any, in accordance with the established reputation of Bakery and the high quality of its products~~] its obligations under this Agreement.

6. EMERGENCY SERVICE. If, by reason of illness or vacation or any other cause, Consignee shall be unable at any time to provide or[-] maintain the efficient distribution service contemplated by this Agreement, Consignee will make other suitable arrangements at his/her/its own expense for the provision and/or maintenance of such service; but[~~;~~] if Consignee is unable or fails to do so, Bakery is authorized in its discretion to provide and/or maintain such service as Consignee's agent and at Consignee's expense and risk. Upon the request of Consignee, Bakery will endeavor in any emergency to provide and/or maintain such service as Consignee's agent and at Consignee's expense and risk.

7. FAILURE TO [~~SERVE~~]SERVICE PARTICULAR STORES. If Consignee fails for any reason to provide or maintain [~~satisfactory~~]the distribution [~~service~~]services required under this Agreement to any segment of the Territory or to any retail store within the Territory, and such failure is not remedied within five days after written notice thereof from Bakery, Bakery, in addition to the other remedies available to it hereunder, may make other arrangements until remedied by Consignee, [~~on either a permanent or temporary basis~~] in the discretion of Bakery, for the service of such store or segment of the Territory, as the case may be. If such arrangements for service are made [~~on a permanent basis,~~]Consignee shall forfeit the right to distribute to the retail store or segment of the Territory involved without compensation to Consignee for the duration of the period of time that Consignee does not provide service, but the applicable retail store or segment shall [~~be deemed to be no longer~~]remain included in the Territory [~~and Schedule A shall be modified accordingly, all without compensation or remuneration to~~], with the parties' rights with respect thereto governed by the terms of this Agreement, upon sale of the Territory by Consignee.

8. CHAIN STORE ACCOUNTS. If any [~~chain~~]Chain requires that authorization for the distribution of Consigned Products to the [~~chain~~]Chain's retail stores in the Territory shall be obtained through a central or district office located outside of the Territory, or only in conjunction with the distribution of Consigned Products to its retail stores in other territories, Bakery will cooperate with Consignee in procuring such authorization. If any [~~chain~~]Chain refuses to pay or to permit store managers to pay any Consignee directly for Consigned Products



and, instead, requires the submission of a consolidated bill to a central or district office of the [chain]Chain, Bakery will handle the billing, and the terms of Paragraph 3 (b) shall apply.

9. PROHIBITED SALES AND DELIVERIES. Consignee will not sell or deliver any Consigned Products, or any products listed in Schedule B, directly to consumers or to any other purchasers except retail stores (exclusive of the in-store bakeries, food-service counters and food-service sections located in such retail stores) within the Territory and such hotels, restaurants, clubs and similar organizations within the Territory as Bakery may authorize in writing. Also, Consignee will not, without like authorization, make deliveries of Consigned Products to any [chain]Chain via a central or district warehouse or in any manner other than directly to its retail stores. If, despite the best efforts of Consignee and Bakery to obtain permission from any [chain]Chain to make deliveries directly to its retail stores, such [chain]Chain refuses to handle Consigned Products except via warehouse deliveries[;], Bakery shall have the right in its discretion to sell and deliver the Consigned Products directly to such [chain]Chain for its own account via such warehouse deliveries, as long as such refusal remains in effect. In addition, Consignee shall, if requested to do so in writing by Bakery, on a non-exclusive basis and for the period of time set forth in such written request, distribute products listed in Schedule B (as modified from time to time pursuant to Paragraph 10) to in-store bakeries and to food-service counters and food-service sections located in retail stores in the Territory.

10. MODIFICATION OF LIST[-OF] PRODUCTS. The list of Consigned Products set forth in Schedule B hereto may be modified or changed by Bakery from time to time by (a) adding such other products as it may deem advisable among those which it now or hereafter produces, (b) withdrawing within any sales district or other geographic area any Consigned Products (whether originally listed or subsequently added) which it discontinues producing or which it discontinues selling in such sales district or other geographic area or (c) adding or withdrawing at any time with or without notice and for any reason any product designated as “test product,” “for market test” or the like. In addition, Bakery shall have the right from time to time to change the ingredients, the method of production or the [labelling]labeling or packaging of any Consigned Products. [~~In addition, if Consignee fails to comply with the terms and conditions of this Agreement with respect to any Consigned Product or Consigned Products, then Bakery may, in addition to any other remedies available to it hereunder, if such failure shall continue for a period of 30 days after written notice thereof from Bakery, without compensation or remuneration to Consignee, delete such Consigned Product or Consigned Products from Schedule B, in which event Consignee’s right to distribute such deleted Consigned Products under the terms of this Agreement shall immediately terminate.~~]

11. SALES DATA. Consignee will furnish to Bakery such sales data as it may reasonably require for the planning of its production schedules, the expansion of its operations and the planning and conduct of sales promotion programs.

12. TRADE NAME, ETC. Consignee at his or her or its sole discretion may use Bakery’s trade name, trademark and distinguishing colors on his/her/its truck and other equipment and supplies; provided, however, that (a) Bakery’s trade name may not be used as a part of any business name or trade name of Consignee without the written consent of Bakery or in any other way which will tend to [confuse]confine the separate identities of Bakery and

Consignee, and (b) Bakery shall have the right at any time to revoke the permission granted in this Paragraph ~~[if, in its opinion, the general appearance of Consignee's truck or other equipment or his/her own general appearance or deportment or that of his/her helper or helpers, if any, shall fall below standards in keeping with the established reputation of Bakery and the high quality of its products]~~.

13. INSURANCE AND INDEMNIFICATION. ~~[At all times during the term of this Agreement,]~~ Consignee shall, at Consignee's expense, maintain adequate public liability ~~[-and]~~, property damage ~~[insurance with respect to Consignee's truck, the operation thereof and the operation of the Distributorship, with an]~~ and, where appropriate, workers' compensation insurance ~~[company acceptable to Bakery, protecting]~~ to protect Bakery and Consignee against any and all claims of personal injury, death or property damage, other than damage to Consigned Products in possession of Consignee. ~~[Said]~~ Such insurance shall be ~~[-written with limits]~~ in such amounts ~~[as Bakery may reasonably request. Any such insurance policy]~~ and have such limits as shall be acceptable to Bakery or required by the retail stores in the territory, whichever is greater, shall name Bakery as an additional insured thereunder and shall provide that the insurance may not be terminated without at least fifteen (15) days ~~[-advance]~~ prior written notice ~~[of cancellation be given]~~ to Bakery. ~~[A certificate indicating such insurance coverage]~~ Consignee shall ~~[-be delivered to Bakery]~~, prior to the date of execution ~~[and delivery]~~ of this Agreement, and at ~~[-such times as may be requested by Bakery. Consignee shall also obtain for his/her own benefit and for the benefit of his/her helpers, if any, worker's compensation insurance. A certificate indicating]~~ least annually thereafter, provide Bakery with insurance certificates evidencing such ~~[-insurance]~~ coverage ~~[-shall also be delivered to Bakery]~~. Consignee ~~[covenants]~~ covenants and agrees to indemnify, defend and save Bakery harmless ~~[-of and]~~ from and against any and all claims relating to payroll, unemployment compensation, employee benefits, personal injury, death, or property damage (other than damage to Consigned Products in the possession of Consignee) caused or alleged to have been caused directly or indirectly by or ~~[through]~~ as a result of the actions of Consignee or his/her its helper or helpers, if any, or by or ~~[through]~~ as a result of the operation of the Distributorship or any vehicle or equipment owned or used by Consignee or his/her its helper or helpers, if any, ~~[or otherwise]~~ and any and all losses, damages, liabilities and expenses (including attorney's fees) incurred by Bakery as a result thereof. Anything in this Agreement to the contrary notwithstanding, this indemnification provision shall survive any termination of this Agreement.

14. NON-PERFORMANCE FOR REASONS BEYOND CONTROL. Neither Bakery nor Consignee shall be liable for any failure to comply with the terms of this Agreement if such failure shall have been caused primarily by fire, labor dispute, strike, war, insurrection, governmental restriction or any other cause beyond the control of the party so failing.

15. INDEPENDENT [BUSINESSMAN] CONTRACTOR. Consignee is a self-employed independent ~~[businessman]~~ contractor, not an agent or employee of Bakery, and has no authority other than to distribute products consigned hereunder and to solicit orders for and make deliveries of Consigned Products in the case of direct sales of Bakery under Paragraph 3 (b), express or implied, to do or perform any act or thing or to make any warranty or representation or promise or commitment of any character which will be binding upon Bakery or for which it will be responsible, and Consignee and Bakery will refrain from any conduct

inconsistent with the terms of this Paragraph 15. Consignee may in its sole discretion, at Consignee's own expense and risk, engage such persons as Consignee shall deem appropriate to assist in the performance of Consignee's obligations under this Agreement; and Consignee shall be responsible for the hiring, firing, training and supervision of, and all remuneration and benefits for, any person so engaged. Bakery shall have no authority to interview, approve or disapprove of any individual Consignee engages to assist in the performance of Consignee's obligations under this Agreement. In addition, at Consignee's expense and risk, Consignee shall have the right to have another independent distributor service, order for, and/or create tickets for a store or stores with Consignee's Territory (a "Supporting Distributor"). Bakery will facilitate such arrangements for one Supporting Distributor at a time in its ordering and accounting system but any payments owed under this Agreement relating to the services performed for Consignee by a Supporting Distributor will be made to Consignee. Consignee is solely responsible for any payments it may negotiate and make to the Supporting Distributor relating to any services performed for Consignee by a Supporting Distributor.

~~16. — [PERSONAL SERVICES. Bakery has entered into this Agreement with Consignee based in part upon Bakery's understanding of Consignee's qualifications for the operation and management of the Distributorship. Consignee understands that this Agreement requires Consignee's personal involvement in the management and operation of the Distributorship and Consignee hereby agrees, except as is otherwise permitted by the terms of Paragraph 6, actively and personally to participate in the operation and management of the Distributorship]~~

The independent contractor relationship between Bakery and Consignee is a material and essential element of this Agreement. The discount percentage and commission rates described in Paragraph 3 and the percentages established in Schedule B or any similar schedule under this Agreement are based in substantial part on such independent contractor relationship and the understanding that the Bakery is not obligated to pay any FICA, income or similar tax or withholding for or on behalf of the Consignee, and the understanding that Bakery and Consignee will not engage in conduct inconsistent with the independent contractor relationship.

16. LIEN OF BAKERY ON DISTRIBUTORSHIP. Bakery shall have a first lien on ~~[this]~~the Distributorship and all proceeds of ~~[this]~~the Distributorship as security for all indebtedness of Consignee to Bakery at any time outstanding. Any sale, transfer or assignment of ~~[this]~~the Distributorship (invalid per Paragraph ~~[19]~~18 without the written approval of Bakery) shall be subject to such lien unless such lien shall be expressly released by Bakery in writing.~~[ Consignee shall]~~

Bakery may not, ~~[without the prior written consent of Bakery, encumber or grant any security interest in or lien upon, or by his/her action or inaction cause or allow any encumbrance, security interest]~~either as a condition of approval of a sale, conveyance, or transfer of the Distributorship, or otherwise, prevent a purchaser of the Distributorship from obtaining financing for the purchase from a third party secured by a lien [to be imposed upon this]on the Distributorship, ~~[other than the lien imposed by this Paragraph 17; and it is expressly agreed that Bakery shall have no obligation whatsoever to consent to any such encumbrance, security interest or lien unless and until the proposed lienholder shall have agreed in writing to~~

~~subordinate its lien, encumbrance or security interest to the lien created by this Paragraph 17.] provided that such third party's lien is junior to any lien held by Bakery[<sup>2</sup>s consent to any such encumbrance, security interest or lien which has been so subordinated to the lien of Bakery established pursuant to this Paragraph 17 shall not be unreasonably withheld].~~

17. RIGHT OF FIRST REFUSAL. Consignee must give Bakery written notice of each proposed sale, conveyance or transfer (hereinafter "proposed sale") of all or any portion of ~~this~~ the Distributorship, which notice shall identify the prospective purchaser and the terms and conditions of the proposed sale. Such notice of proposed sale from Consignee shall be deemed to be an irrevocable offer to sell the Distributorship, or the portion thereof described in such notice of proposed sale, to Bakery on the terms and conditions set forth therein. Bakery shall have the right, but not the obligation, to accept such offer by giving Consignee written notice of acceptance within ~~[30]~~ thirty days of the later of (i) Bakery's receipt of Consignee's written notice of proposed sale, or (ii) Bakery's receipt of the full and complete application of the prospective purchaser, including all requested financial and credit information (which right is hereinafter referred to as the "Right of First Refusal"). Such notice of acceptance from Bakery shall be deemed to be an acceptance of Consignee's offer of sale, and the sale of the Distributorship, or the portion thereof offered for sale, by Consignee to Bakery, on the terms set forth in the notice of proposed sale, shall be consummated at a closing to be held within ~~[30]~~ thirty days of such notice of acceptance. Bakery's failure or refusal to exercise any Right of First Refusal hereunder does not constitute, and shall not be deemed to be, an approval by Bakery of the proposed sale or the proposed purchaser. Any change in the identity of the proposed purchaser or in any terms of any proposed sale from those identified in any notice from Consignee to Bakery hereunder shall be deemed to be a new proposed sale with respect to which Consignee must give Bakery a new notice and a new Right of First Refusal in accordance with the terms of this Paragraph ~~[18]~~ 17.

18. SALE OF DISTRIBUTORSHIP. Except as otherwise set forth in this Agreement, Consignee shall have the right, in his/her/its sole discretion, to sell and determine the price of the sale of any portion or all of their territory to a third party. Consignee acknowledges that third party purchasers may finance their purchases through loans and that the inability of a purchaser to obtain a loan for the price set by Consignee does not represent an infringement of Consignee's right hereunder to determine the price of the sale of a portion or all of Consignee's territory to a third party.

~~19. — SALE OF DISTRIBUTORSHIP. [This]~~ The Distributorship may not be sold, conveyed or transferred by Consignee in whole or in part without the prior written approval of Bakery. Bakery will grant such approval with respect to a proposed sale if ~~[-]~~ in Bakery's commercially reasonable discretion it determines that (i) Consignee has given Bakery proper and timely notice of such proposed sale as required by Paragraph ~~[18]~~ 17, (ii) Bakery has not exercised, or has in writing refused to exercise, its Right of First Refusal with respect to such proposed sale ~~and~~, (iii) the Distributorship or portion of Distributorship being sold, and the remainder retained by Consignee if applicable, can provide reasonable, sustainable income commensurate with the geographic territory, (iv) all Territories involved in the sale remain contiguous, (v) the proposed purchaser ~~[meets the requirements of]~~ provides Bakery ~~[as to character, ability, financial responsibility, business acumen and adequate facilities;]~~ with a reasonable plan to provide adequate service to the Distributorship in Bakery's reasonable

discretion, and (vi) the proposed purchaser is able to secure necessary financing, including, if applicable, satisfying all requirements for any loan provided~~[, however, that any such approval shall be conditioned upon Consignee's payment in full, prior to such sale, of all Consignee's indebtedness to Bakery]~~ by a third party, including any third party loan facilitated through Bakery. For the avoidance of doubt, nothing in this Agreement shall permit Bakery to condition its approval of a proposed sale solely on whether the prospective buyer has experience as a distributor of baked products. In addition, where such proposed sale involves the division of the Territory or the sale of only a portion of the Distributorship, such proposed sale is subject to, and may not be effected without, Bakery's prior written approval of the division of Territory sought to be effected thereby. In the event Consignee has placed his/her/its Distributorship up for sale and a prospective buyer makes an inquiry about the possible purchase of Consignee's Distributorship, Bakery shall contact that prospective buyer within ten (10) business days of receipt of such inquiry.

Bakery will notify Consignee ~~[with reasonable promptness]~~ in writing within fifteen (15) business days of Bakery's receipt of all information required from Consignee, the potential purchaser, and any third party (including any third party lender), of its approval or disapproval of any proposed sale and, if applicable, of any proposed division of the Territory. Consignee shall have the right to request information concerning the reason for any delay in Bakery's approval of a sale of Consignee's Distributorship, including, by way of example only, the failure of Consignee or the purchaser to provide all necessary paperwork. Any transaction or instrument which purports to constitute an assignment of this Agreement or a sale, transfer or assignment of ~~[this]~~ the Distributorship, as a ~~[-]~~ whole or in part, without such written approval shall be void. Any transaction or instrument which purports to constitute an assignment of this Agreement or a sale, transfer or assignment of this Distributorship, as a whole or in part, on terms that are different from those set forth in, or to a party different from the proposed purchaser identified in, the notice of proposed sale given Bakery pursuant to the terms of Paragraph ~~[18]~~ 17 shall be void. Any valid sale of this Distributorship as a whole shall operate to release Consignee from all obligations to Bakery hereunder except the obligation to pay in full any adverse balance in his~~[-or]~~ /her/its account with Bakery, and Bakery shall have the right in its discretion to require the purchaser to accept a new consignment agreement in substantially the same form, in lieu of continuing this Agreement in effect, in whole or in part, on an assigned basis.

For avoidance of doubt, this paragraph 18 does not apply to Distributorship sales from Consignee to Bakery, which shall be governed by the applicable provisions of this Agreement.

19. TERMINATION OF CONSIGNMENT AGREEMENT FOR CAUSE. Bakery, in addition to all other remedies available to it at law~~[;]~~ or equity and to the extent permitted by law, shall have the right ~~[in its discretion]~~ to terminate this Agreement at any time, upon written notice to Consignee, for any of the following causes:

(a) ~~— [failure of Consignee adequately to realize the sales potential of the Territory and Consignee's failure to make satisfactory improvement within thirty days after notice of inadequacy from Bakery;]~~

~~(b) — [failure of Consignee to use his/her best efforts to realize the full sales potential of the Territory for Consigned Products and the continuance of such failure for seven days after written notice thereof from Bakery;]~~

~~(c) — [failure of Consignee to maintain efficient distribution service throughout the Territory in keeping with the established reputation of Bakery and the high quality of its products and the continuance of such failure for seven days after written notice thereof from Bakery;]~~

~~(d) — [failure of Consignee to pay, when due, all amounts owed to Bakery and the continuance of such failure for seven days after written notice thereof from Bakery;]~~

~~(e) — [failure of Consignee to maintain the general appearance and condition of his/her truck or other equipment or his/her own general appearance or deportment or that of his/her helper or helpers, if any, in accordance with standards in keeping with the established reputation of Bakery and the high quality of its products and the continuance of such failure for more than five days after written notice thereof from Bakery;]~~

~~(f) — [failure of Consignee actively and personally to participate in the day to day management and operation of the Distributorship and the continuance of such failure for seven days after written notice thereof from Bakery;]~~

(a) failure of Consignee to [~~meet~~]perform or [~~exceed the sales goals and/or quotas established by Bakery pursuant to Paragraph 4~~]comply with any material term or provision of this Agreement and the continuance of such failure for [~~30~~]seven (7) days after written notice thereof from Bakery[;]:

(b) any[~~repeated~~] failure [~~of the type described in any of subparagraphs (a) through (g) above;~~]on 4 or more occasions over any 12-month period to perform or comply with any term or provision of this Agreement even though a previous failure or failures may have been corrected after notice;

~~(i) — [failure of Consignee] to perform or comply with any [other material term of this Agreement and the continuance of such failure for seven days after written notice thereof from Bakery; or, immediately upon written notice, any repeated failure to perform or comply with such a material term of this Agreement even though a previous failure or failures may have been temporarily corrected after notice;]~~

(c) any dishonesty of Consignee in his/her/its dealings with Bakery or with others in connection with Consignee's distribution services under this Agreement;

(d) any actions, activities or practices of Consignee which either do, or in the [~~reasonable~~]reasonably determined opinion of Bakery are likely to, materially damage the reputation of Bakery and/or Bakery's relations or reputation with consumers, retail stores or any other purchaser of Consigned Products;

(e) Consignee's insolvency or admission in writing of his/her/its inability to pay his/her/its debts as they mature;

(f) the filing of ~~[-a]~~ voluntary bankruptcy petition by Consignee or his/her/its failure to vacate an involuntary bankruptcy petition within sixty days after date of filing;

(g) failure of Consignee to vacate the appointment of a receiver or trustee of Consignee's business or assets within sixty days after the date of appointment; or

(h) a general assignment by Consignee for the benefit of his/her/its creditors.

Termination of this Agreement and the Distributorship pursuant to this Paragraph shall operate to release all rights and obligations hereunder of both Bakery and Consignee except Consignee's right to receive compensation therefor in accordance with the established business practices of Bakery, and each party's right to receive any favorable balances and obligation to pay any adverse balances.

20. BAKERY'S OPTION TO BUY DISTRIBUTORSHIP. Bakery shall have the right in its discretion to purchase all or any portion of the Distributorship at any time upon written notice to Consignee. Bakery shall become the owner of the Distributorship, or the portion being purchased, on the date specified in the notice, whether or not a final purchase price has been agreed upon or determined, as provided below. Bakery may begin operating the Distributorship, or the portion being purchased, for its own account on such date. If Bakery elects to purchase all or any portion of the Distributorship pursuant to this ~~[paragraph]~~ Paragraph, it will pay to Consignee a sum equal to (a) the fair market value of ~~[this]~~ the Distributorship, or the portion thereof being purchased, as the case may be, on the date set forth in the written notice plus (b) 25% of such fair market value, to be determined either by agreement between Bakery and Consignee or, if they shall be unable to agree, ~~[by three arbitrators, one of whom shall be chosen by Bakery and one by Consignee and the third by the two first chosen. Each party to such arbitration shall pay all fees and expenses incurred by it in connection with such arbitration, including, without limitation, the fees and expenses of the arbitrator chosen by it; and the fees and expenses of the third arbitrator shall be shared equally by Consignee and Bakery. The determination of fair market value by a majority of the three arbitrators shall be final and binding upon]~~ both Bakery and Consignee [for the purpose of this Paragraph] pursuant to the alternate dispute resolution protocol set forth in paragraph 27. Notice of purchase pursuant to this Paragraph shall operate to release all rights and obligations hereunder of both Bakery and Consignee except (a) the right to receive any favorable balances and the obligation to pay any adverse balances and (b) the rights and obligations with respect to payment and arbitration stated in this Paragraph.

21. TERMINATION OF CONSIGNMENT AGREEMENT BY CONSIGNEE. Consignee shall have the right in his/her/its discretion to terminate this Agreement at any time upon thirty days written notice to Bakery. Termination pursuant to this Paragraph shall operate to release all rights and obligations hereunder~~[-]~~ of both Bakery and Consignee except the right to receive any favorable balances and the obligation to pay any adverse balances.

22. DEATH OF CONSIGNEE. In case of Consignee's death, all terms of this Agreement (see particularly Paragraph 6) shall continue in effect during the next ~~[90]~~ ninety days, and shall inure to the benefit of and be binding upon the legal representatives of Consignee's estate during such period. If the legal representatives of Consignee's estate shall not

have sold ~~[this]~~the Distributorship pursuant to Paragraph ~~[19]~~18 within such ~~[90-]~~ninety day period, all rights and obligations hereunder of both Bakery and Consignee's estate shall terminate at the expiration of such period except (a) the right to receive any favorable balances and the obligation to pay any adverse balances and (b) the right of Consignee's estate to receive and the obligation of Bakery to pay to Consignee's estate the entire proceeds (subject, however~~[,]~~ to Bakery's lien per Paragraph ~~[17]~~16) of any sale of ~~[this]~~the Distributorship (in whole or in part) made or contracted to be made by Bakery within the next ~~[90]~~ninety days; provided, however, that if Bakery shall have provided distribution services within all or any portion of the Territory during all or any portion of the period from the expiration of the first ~~[90-]~~ninety day period to the date of such sale, Bakery may deduct from the proceeds of sale any excess of its expense over income in providing such services. If Bakery provides emergency distribution services under Paragraph 6 during all or any portion of the first ~~[90-]~~ninety day period, any excess of its income over expense in providing such service shall be paid to Consignee's estate (subject to any right of set-off that may exist), but Consignee's estate shall not be liable to Bakery for any excess of its expense over income in providing such services, although any such excess may be deducted from the proceeds of sale.

**23. TERMINATION OF CONSIGNMENT AGREEMENT WITHOUT CAUSE.**  
**Bakery shall have the right in its discretion to terminate this Agreement at any time without cause upon written notice to the Consignee. Upon termination pursuant to this Paragraph the Bakery will pay to the Consignee a sum equal to (a) the fair market value of the Distributorship on the termination date plus (b) 25% of such fair market value, to be determined either by agreement between Bakery and Consignee or, if they shall be unable to agree, pursuant to the alternative dispute resolution set forth in Paragraph 27. Termination pursuant to this Paragraph shall operate to release all rights and obligations hereunder of both Bakery and Consignee except (i) the right to receive any favorable balances and the obligation to pay any adverse balances and (ii) the rights and obligations with respect to payment and arbitration stated in this Paragraph. This Paragraph, and the rights and remedies set forth in this Paragraph, shall constitute the Consignee's sole remedy in the event of a termination of this Agreement without cause.**

~~24. [WITHHOLDING PRODUCT. Upon Consignee's failure to fulfill any of his or her obligations under this Agreement or upon the occurrence of any of the events referred to in Paragraph 20, Bakery shall have the right, without thereby terminating this Agreement, immediately to discontinue shipment of Consigned Products to Consignee until such time as Consignee shall have completely remedied such failure or occurrence, and no such discontinuance shall be, or be deemed to be, a waiver by Bakery of any of its rights or remedies under this Agreement or at law or in equity, including, without limitation, the right to terminate this Agreement for the same failure or occurrence. Bakery's rights and remedies under this Paragraph shall be in addition to, and may be exercised concurrently with, all other remedies available to it under this Agreement or at law or in equity.]~~  
**AUTHORIZED DEDUCTIONS:**  
**Consignee hereby authorizes Bakery to deduct from any amounts owed under this Agreement: (a) any amounts owed by Consignee pursuant to the stale policy; (b) any pallet or other fees that may be owed by Consignee under this Agreement, including the amendments hereto; (c) any maintenance or other charges related to the purchase and use of any handheld computer or other device used by Consignee in connection with the**



services provided by him/her/it under this Agreement; and (d) any other deductions the parties may agree to from time to time.

25. RECALLS AND PRODUCT SAFETY MATTERS. Consignee shall assist in all product recalls as requested by Bakery, and otherwise meet any and all of Consignee's responsibilities related thereto under applicable law in a prompt manner, which shall in no case be longer than within 24 hours of notice of the recall.

26. NOTICES. All notices which are required to or which may be given under the terms hereof shall be in writing and shall be deemed given when deposited in the United States mails, postage prepaid, and addressed to the other party at the address designated for such party on the cover page hereof. Either party may change such address by giving notice of a new address.

27. EXCLUSIVE ALTERNATIVE DISPUTE RESOLUTION PROCESS AND CLASS AND COLLECTION ACTION WAIVER. Consignee and Bakery agree that the dispute resolution process set forth below shall be the sole and exclusive method by which any and all Covered Disputes, as hereinafter defined, shall be resolved and decided between Consignee and Bakery:

(A) Covered Disputes. Except for Excluded Disputes, as hereinafter defined, Covered Disputes shall include any and all claims, disputes, suits or causes of action between Consignee, its predecessors and/or successors and/or its and their respective past, current and/or future owners, officers, directors, employees, shareholders, members, managers, partners, beneficiaries, administrators, executors, estates, attorneys, insurers, assigns, agents, representatives and/or all business entities in which they have, may have or ever had an ownership interest (collectively, for purposes of this Article, the "Consignee Parties") and Bakery, its predecessors and/or successors and/or its and their respective past, current and/or future officers, directors, employees, shareholders, members, managers, partners, subsidiaries, parent companies, insurers, assigns, agents and/or representatives (collectively, for purposes of this Article, the "Bakery Parties"), including, but not limited to: all claims and disputes arising out of or under or in any way relating to this Agreement or any other agreement between the parties, including any claim for a breach or termination thereof, and/or the Territory; and all claims and disputes relating to any allegation of any employment, franchise or other non-independent contractor relationship or misclassification between any of Consignee Parties and any of the Bakery Parties, and including, but not limited to, all claims and disputes pertaining to: contract, tort, defamation, fraud, equity and/or other common law claims, wage and hour claims, pension claims, benefit claims, recovery or reimbursement claims, discrimination, harassment and retaliation claims and claims arising under or relating to any federal, state or local constitution, statute, law or regulation, whether now or hereafter existing.

(B) Excluded Disputes. The following claims and disputes are not subject to this arbitration provision: (1) claims for the specific performance of this dispute resolution provision; (2) claims or cross-claims for contribution, indemnification or subrogation in connection with a claim by a third-party against a Consignee Party and/or a Bakery Party; (3) applications for temporary or preliminary injunctive relief in aid of arbitration or for

the maintenance of the status quo pending arbitration; (4) claims for the misuse of trade names, trademarks or intellectual property of a Bakery Party; (5) claims for the misuse of alleged confidential trade secrets and proprietary business information of a Bakery Party; (6) claims raised in litigation pending as of the date Bakery and Consignee enter into this agreement; and (7) any claim that is expressly precluded from arbitration by an applicable federal law, statute or regulation. Further, nothing set forth in this Article waives Consignee's right to file a charge or complaint with, or on behalf of, any federal, state, or local administrative agency if such claim is expressly precluded from arbitration under applicable law and such law is not preempted by the Federal Arbitration Act (9 U.S.C. §§ 1, *et seq.*) ("FAA"); however, any Covered Dispute that is not so precluded must be submitted to dispute resolution in accordance herewith.

(C) Notice of Covered Dispute. In the event of any Covered Dispute, the party initiating the Covered Dispute must first provide written notice of each Covered Dispute, by mail, to the other party ("Notice"). Consignee shall mail its Notice to Notice to Pepperidge Farm, Incorporated, Attn: Legal Department, 1 Campbell Place, Camden, NJ 08103. Bakery shall mail its Notice to Consignee to the address set forth above in this Agreement, except that if Consignee has subsequently notified Bakery of a change in Consignee's address, Bakery shall mail its Notice to Consignee at the new address. The Notice must state the claim with sufficient detail to identify the claim as a Covered Dispute. The providing of the Notice, and the subsequent informal meeting (described below), must occur before a Covered Dispute may proceed to binding arbitration.

(D) Informal Meeting. Upon receiving Notice of a Covered Dispute, an authorized representative of Bakery and an authorized representative of Consignee shall meet and confer regarding the Covered Dispute, and must make a good faith effort to resolve the Covered Dispute. For the avoidance of doubt, the refusal of either Bakery or Consignee to participate in more than one meeting under this subsection shall not by itself be the basis for any determination that such party has breached its "good faith effort" obligation. The meeting shall be held within fourteen (14) business days of receipt of the Notice, unless mutually agreed, in writing, by Consignee and Bakery to hold the meeting at a later date.

(F) Filing for Arbitration.

(i) To initiate arbitration, Consignee shall file a written demand for arbitration with JAMS on a fully completed, then current JAMS Demand for Arbitration Form ("Demand") along with a copy of the Consignment Agreement and an amount equal to the filing fee applicable in state court in the jurisdiction in which the arbitration is filed, constituting Consignee's portion of the arbitration filing fee. Consignee shall simultaneously send a copy of the Demand to Bakery at the following address: Notice to Pepperidge Farm, Incorporated, Attn: Legal Department, 1 Campbell Place, Camden, NJ 08103. The Demand must be filed with JAMS within the time period provided by the statute of limitations applicable to the claim(s) set forth in the Demand. The date upon which the Demand is sent to JAMS shall be the date that the arbitration is initiated for purposes of statute of limitations applicable to the claim(s) asserted. As set forth more fully in Paragraph 27(J), Bakery will pay all arbitration filing fees, except for an amount equal

to the filing fee applicable in state court in the jurisdiction in which the arbitration is filed, if the Covered Dispute is initiated by Consignee.

(ii) To initiate arbitration, Bakery shall file a Demand with JAMS, along with a copy of the Consignment Agreement and all filing fees required by the JAMS Rules, as hereinafter defined. Bakery shall simultaneously send a copy of the Demand to the Consignee address set forth in this Agreement. The Demand must be filed with JAMS within the time period provided by the statute of limitations applicable to the claim(s) set forth in the Demand. The date upon which the Demand is sent to JAMS shall be the date that the arbitration is initiated for purposes of the statute of limitations applicable to the claim(s) asserted.

(G) Selection of Arbitrator and Rules for Arbitration. Consignee and Bakery agree that any arbitration of a Covered Dispute shall be resolved by final and binding arbitration through JAMS pursuant to its Comprehensive or Streamlined Rules, whichever is applicable, in effect at the time of the filing of the Demand with JAMS ("JAMS Rules"), EXCEPT for the following:

(i) The arbitration shall be conducted before a single arbitrator, unless all parties to the arbitration agree otherwise in writing, which arbitrator is to be appointed through the manner provided by the JAMS Rules. No person shall serve as arbitrator for any matter in which that person has any financial or personal interest in the result of, or subject matter of, the proceeding or a past or present relationship with the parties or their counsel. Prior to accepting an appointment, the prospective arbitrator(s) shall disclose any circumstance likely to prevent a prompt hearing or to create an appearance or presumption of bias or conflict. Upon receipt of such information, JAMS will communicate the information to the parties for their comment and will appoint a new arbitrator if either party objects based on the information provided by the prospective arbitrator. Vacancies shall be filled in accordance with the JAMS Rules.

(ii) The arbitration shall be held in in the State of Connecticut, unless Bakery and Consignee mutually agree in writing to some other location.

(iii) The arbitration hearing for a Demand that is subject to and qualifies for the Expedited Rules of JAMS in effect at the time the Demand is filed with JAMS shall last no longer than one hearing day (apportioned equally between the parties). The hearing for all other Demands shall last no longer than three total hearing days (apportioned equally between the parties), all of which shall be consecutive days absent agreement of Consignee and Bakery.

(iv) At the arbitration hearing, either party may be represented by an attorney or other representative or by itself, himself or herself.

(v) The arbitrator(s) shall maintain the confidentiality of the hearings unless the applicable law provides to the contrary. The arbitrator(s) shall have the authority to exclude witnesses, other than a party and the party's representative(s), from

the hearing during the testimony of any other witness. The arbitrator(s) also shall have the authority to decide whether any person who is not a witness may attend the hearing.

(vi) Unless the JAMS Rules or the applicable law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party, but instead, the arbitrator(s) shall require the party who is present to submit such evidence as the arbitrator(s) may require for the making of an award.

(vii) Discovery requests shall be made pursuant to the JAMS Rules.

(viii) The parties may file and the arbitrator(s) shall be authorized to hear and decide at any point in the proceedings any motion permitted by the Federal Rules of Civil Procedure, including, but not limited to: motions for protective orders; motions to dismiss; motions for summary judgment; and motions in limine.

(ix) The arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered; conformity to legal rules of evidence shall not be necessary.

(x) The arbitrator(s) may receive and consider the evidence of witnesses by affidavit but shall give it only such weight as the arbitrator(s) deems it entitled to after consideration of any objection made to its admission by the other party. All documents and affidavits to be considered by the arbitrator(s) shall be provided to the other party and the arbitrator(s) prior to the hearing.

(xi) The arbitration shall be subject to the same burdens of proof as if the Covered Dispute was being heard in federal district court.

(xii) To the extent any of the terms, conditions or requirements of this Article conflict with the JAMS Rules or other applicable rules or laws, the terms, conditions and requirements of this Article shall govern.

#### H. Arbitration Award.

(i) The arbitrator(s) shall make the award within thirty (30) days of the close of the hearing or as soon as possible thereafter, unless otherwise agreed by the parties or specified by the JAMS Rules or applicable law. The award shall be in writing, setting forth an explanation for the award, and shall be signed by the arbitrator(s). All awards shall be executed in the manner required by law. The award shall be final and binding upon Consignee and Bakery, and any judicial review or appeal shall be as provided by law.

(ii) The arbitrator(s) shall award relief only on an individual basis. The arbitrator(s) shall have the authority to award any damages, injunctive relief, or other relief, as otherwise permitted by applicable law and this Agreement. The arbitrator(s) shall not have the authority to make any award that is arbitrary and capricious or to award to

Bakery the costs of the arbitration that Bakery is otherwise required to bear under this Article.

I. Delivery of Award to Parties. The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative via certified mail, return receipt, personal service of the award, or the filing of the award in any manner that is permitted by law.

J. Expenses and Fees. Unless otherwise precluded by applicable law, expenses and fees shall be paid and/or allocated as follows:

(i) Bakery shall pay any filing fee required by JAMS, except that if the arbitration is demanded by Consignee, Consignee shall be required to pay an amount equal to the filing fee applicable in state court in the jurisdiction in which the arbitration is filed, which shall be paid by Consignee when the Demand is filed with JAMS as provided in Paragraph 27(F). If Consignee does not pay an amount equal to the filing fee applicable in state court in the jurisdiction in which the arbitration is filed to JAMS when the Demand is filed, the Demand shall be deemed to have been withdrawn by Consignee for all purposes, with prejudice, *provided that* if Consignee's failure to pay the required fee was due to inadvertence, Consignee may reinstate the Demand by paying the fee within five business days after Consignee receives notice of the withdrawal of the Demand.

(ii) Bakery shall pay the arbitrator(s) fees.

(iii) Postponement and cancellation fees shall be payable, at the discretion of the arbitrator, by the party requesting or causing the postponement or cancellation.

(iv) The expenses of witnesses shall be paid by the party requiring the presence of such witnesses, including any witness fee or subpoena fees ordered or required by the arbitrator for such witnesses. All other ordinary and reasonable expenses of the arbitration, including hearing room expenses, travel expenses of the arbitrator and any witness produced at the arbitrator's direction, shall be paid by Bakery.

(v) Each party shall pay its own attorneys' fees, legal fees and expenses. The arbitrator(s) may award attorneys' fees and other costs to a prevailing party if expressly provided by applicable law.

(v) Notwithstanding anything herein, the Arbitrator shall, in his or her sole discretion, have the authority to award attorneys' fees and costs against any Party in the event he or she determines that a party's claims were frivolous or were asserted in bad faith or as required by applicable law.

K. Enforcement. The award of the arbitrator(s) may be enforced under the terms of the FAA to the extent applicable and/or under any applicable state law. If a court determines that the award is not completely enforceable, the award shall be enforced and binding on both parties to the maximum extent permitted by law. Consignee and Bakery

shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

L. Interpretation and Application of Procedure. Except as set forth in Paragraph 27(N) the arbitrator(s) shall interpret and apply these procedures as it relates to the arbitrator's powers and duties.

M. CLASS/COLLECTIVE/REPRESENTATIVE ACTION/ WAIVER.

(i) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONSIGNEE HEREBY AGREES, ON ITS BEHALF AND ON BEHALF OF ITS PAST, CURRENT AND FUTURE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, PREDECESSORS, SUCCESSORS, BENEFICIARIES, ADMINISTRATORS, EXECUTORS, ESTATES, ATTORNEYS, INSURERS, AGENTS, REPRESENTATIVES, AND ASSIGNS, TO BRING ANY AND ALL CLAIMS, DISPUTES, SUITS AND/OR CAUSES OF ACTION FOR A COVERED DISPUTE ONLY ON AN INDIVIDUAL BASIS AND WAIVES ANY AND ALL RIGHTS TO:

(1) INITIATE OR MAINTAIN ANY CLAIM, DISPUTE, SUIT OR CAUSE OF ACTION RELATING TO, OR ASSERTING, IN WHOLE OR IN PART, ANY COVERED DISPUTE ON A CLASS ACTION BASIS, COLLECTIVE ACTION BASIS, OR REPRESENTATIVE ACTION BASIS, AGAINST BAKERY AND/OR THE BAKERY PARTIES;

(2) SERVE OR PARTICIPATE AS A REPRESENTATIVE IN ANY SUCH CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION ASSERTING A COVERED DISPUTE;

(3) SERVE OR PARTICIPATE AS A MEMBER OF ANY SUCH CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION ASSERTING A COVERED DISPUTE; OR

(4) RECOVER OR RECEIVE ANY DAMAGES OR RELIEF IN CONNECTION WITH ANY SUCH CLASS ACTION, COLLECTIVE OR REPRESENTATIVE ACTION ASSERTING A COVERED DISPUTE;

EXCEPT THAT CONSIGNEE DOES NOT WAIVE ANY RIGHT TO BRING A CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION ASSERTING A BREACH OF, AND/OR SEEKING ENFORCEMENT OF, THAT CERTAIN APRIL, 2021 MEMORANDUM OF UNDERSTANDING SETTING FORTH THE SETTLEMENT AMONG THE PARTIES IN THE MATTER OF BRETT ET AL V PEPPERIDGE FARM, INC., CONENCTICUT SUPERIOR COURT DOCKET NO. X10-UWY-CV-14-6023215-S, OR ANY SETTLEMENT AGREEMENT THAT THE PARTIES THERETO EXECUTE PURSUANT TO THAT MEMORANDUM OF UNDERSTANDING.

(ii) Nothing in the above-provided waiver or elsewhere in this Agreement shall restrict or be construed to restrict multiple claimants or plaintiffs from filing and litigating their individual claims in a single arbitration proceeding where each is a named party in his/her/its own right, nor the arbitrator from joining such claims in a single consolidated arbitration proceeding, provided that the JAMS Rules otherwise permit such joinder and the arbitrator agrees to such joinder, in the arbitrator's sole discretion. Furthermore, it shall not be a defense by Bakery to any Covered Dispute that the claimant or plaintiff has failed to join a necessary party if the terms of this Agreement in any way prevent such joinder.

(iii) Consignee further agrees that if it is included within any such class, collective, or representative action, it shall take all steps necessary to promptly and fully opt-out of the action or refrain from opting in, as the case may be and Consignee agrees that no arbitrator(s) shall have authority to: (1) order, authorize, or permit any notice or information about an arbitration or any claims or defenses in an arbitration to be sent to any class or group of persons other than the parties to the individual arbitration, provided that any party or the arbitrator may compel testimony of a witness or the production of documents, material or information consistent with the JAMS Rules; or (2) order or require either party to produce any kind of contact or other information for any class or group of current or former distributors/consignees of Bakery or the Bakery Parties.

(iv) Any Covered Dispute filed or brought in court or arbitration as a class, collective, or representative action shall be promptly dismissed by Consignee, or if not by the court or arbitrator(s), and shall be decided in arbitration on an individual basis. Any issue concerning the validity or enforceability of this waiver (including the prohibition against class, collective, multiple plaintiff or representative action arbitration) shall be decided by a court of competent jurisdiction and having proper venue (forum) as provided in this Agreement, and no arbitrator(s) shall have any authority to consider or decide any issue concerning the validity or enforceability of this waiver.

N. Determination of Arbitrability: Any issue concerning arbitrability of a particular issue or claim pursuant to this dispute resolution provision shall be resolved by a court of competent jurisdiction and having proper venue (forum) as provided in this Agreement, and no arbitrator(s) shall have any authority to consider or decide any issue concerning the arbitrability of a particular issue or claim pursuant to this dispute resolution provision.

O. Interpretation. Any dispute regarding the scope, application, enforcement or interpretation of the dispute resolution provisions and other procedures set forth in this Article shall be governed by the FAA and to the extent the FAA is inapplicable, the laws of the State of Connecticut shall apply.

28. DURATION OF CONSIGNMENT AGREEMENT. This Agreement shall continue in effect until terminated in the manner provided in Paragraphs [~~20~~19, 21, 22[;] or 23,[~~or~~] until Bakery has given Consignee written notice of Bakery's election to purchase **all or any portion of** the Distributorship, as provided in Paragraph [~~21~~20, **or until Bakery has purchased all or any portion of the Distributorship pursuant to the Right of First Refusal, as provided**

in Paragraph 17. In the event that Bakery has given Consignee written notice of its election to purchase a portion of the Distributorship as provided in Paragraph 20 or if Bakery has purchased a portion of the Distributorship pursuant to the Right of First Refusal as provided in Paragraph 17, the parties shall promptly enter into a new Consignment Agreement in substantially the form hereof, except for the modification of the Description of Territory in Schedule A to reflect such purchase.

29. GENERAL. The terms of this Agreement shall be construed so as to carry into effect its true intent and meaning, including the essential provision that Consignee operate as an independent contractor, and not employee of, Bakery, and any ambiguities shall be construed and any inconsistencies shall be reconciled accordingly. Any consent, permission, authorization or [~~wavier~~ waiver] given hereunder with respect to any continuing act or condition may be subsequently revoked in the same manner as given. Except as expressly set forth herein, this Agreement may not be assigned by Consignee.

30. ENTIRETY OF CONSIGNMENT AGREEMENT. This Agreement represents the entire agreement between Bakery and Consignee and supersedes any and all prior franchises, agreements or understandings between Bakery and Consignee, whether written or oral, regarding distribution of Consigned Products. This Agreement may not be amended orally or by custom or conduct but only by a writing signed by both Bakery and Consignee.