

## PRIVATE LABEL AGREEMENT

THIS PRIVATE LABEL AGREEMENT ("Agreement"), dated \_\_\_\_\_, 20\_\_\_\_, by and between NOW FOODS, 395 S. Glen Ellyn Road, Bloomingdale, Illinois, 60108 ("NOW" or "Company"), and

("Customer"), grants to Customer the right to affix or to have affixed its own labels on bottled or otherwise packaged products purchased from NOW for resale by Customer ("Products") under Customer's own brand name.

### 1. Representations and Warranties; Regulatory Compliance.

a. By Company. NOW represents and warrants that all Products and text on stock labels as produced by Company for such Products ("NOW Stock Labels"):

- i. conform to Company's most current written specifications for such Products;
- ii. are fit for human consumption and/or use;
- iii. contain, to the best of NOW's knowledge, accurate and reliable allergen information, as required by the U.S. Food and Drug Administration ("FDA");
- iv. are, to the best of NOW's knowledge, free from infringement of all copyrights, trademarks, patents and other intellectual property rights; and
- v. are manufactured and distributed in compliance with NOW's good manufacturing practices ("GMPs"), applicable federal laws and regulations of the United States, and applicable state laws and regulations of the State of Illinois.

NOW makes no representation or warranty that any Products comply with any applicable product registration, importation, intellectual property, and other laws and regulations outside the U.S. or Illinois.

b. By Customer. Customer represents, warrants and agrees that:

- i. it is solely responsible for all labels it produces and/or affixes itself, or has produced and/or affixed on its behalf by someone other than Company (or a party related to Company) ("Customer Labels"), to Products purchased hereunder;
- ii. neither "NOW" nor "NOW Foods" (e.g., "Manufactured by NOW Foods") will appear anywhere on any NOW Stock Labels or Customer Labels, whether or not affixed by Company, without Company's written approval;
- iii. all Customer Labels are, to the best of Customer's knowledge, free from infringement of all copyrights, trademarks, patents and other intellectual property rights;
- iv. it will comply with shelf life restrictions, best by dates, refrigeration/storage and other like requirements as noted in and on the text of Company's then current NOW Stock Labels;
- v. no changes or overlabeling on the NOW Stock Labels or on any packaging, bottles or other containers containing the Products, will be made without Company's written approval;
- vi. to the extent Customer makes any change to any NOW Stock Labels or any package label, or any bottle, package or other container containing the Products, without Company's written approval, or makes any claim, representation or warranty with respect to any Products beyond the scope of this Agreement, such change, claim, representation or warranty by Customer shall be void and, if held valid, shall be the sole responsibility of Customer;
- vii. it will make no claims on the Product labels beyond what appears on NOW Stock Labels or in Company literature, or as otherwise approved by Company; and
- viii. if Customer wishes or requires that Company report Serious Adverse Events to the FDA, it will sign Company's then current Agreement on Adverse Event Reporting ("AER Agreement"), which NOW will provide upon request.

c. Label Approval. NOW reserves the right to approve all labels which Company affixes to the Products.

2. Intellectual Property. Products may be subject to certain intellectual property rights of NOW or other entities. Customer agrees that it will not seek to register any intellectual property in connection with Products or misrepresent the source of Products. With respect to Products for which Company is the owner of intellectual property rights, Customer may be required to enter into Company's then current and applicable License Agreement. With respect to Products for which other entities are the owners of intellectual property rights, this Agreement does not grant to Customer any licensing, sub-licensing or other rights of usage to such third-party intellectual property.

3. Indemnification. NOW shall indemnify Customer for all costs resulting from any product liability claim against Customer by a party that Customer has directly provided with any Product, provided that any such Product was not contaminated, improperly stored, altered, misbranded, or diverted outside the U.S. by Customer. Upon request, NOW will provide Customer with a Certificate of Liability Insurance evidencing its product liability insurance coverage. Customer shall indemnify and hold NOW harmless from any liability incurred by NOW involving or arising out of (a) any breach or failure by Customer to meet any obligation to NOW under this Agreement; (b) any tort claim, including claims for personal injury, advertising injury, wrongful death to any persons, or injury or damage to any property or business resulting from or in connection with any wrongful or negligent act or omission by Customer (or its employees or other agents) in the course of its performance of this Agreement, including, but not limited to, the storage, handling, distribution, sale or transportation of the Products and the making of a representation, warranty or condition concerning the characteristics or method of usage of the Products which differs from that offered by NOW; and (c) any third-party claim arising from Customer's misrepresented action of its authority from any contractual commitment made by Customer not expressly authorized under this Agreement; provided, however, that Customer's obligation hereunder shall in no way require defense or indemnification regarding any liability, loss, expense or claim arising from any act or omission of NOW with respect to any of the Products. Upon request, Customer will provide NOW with a Certificate of Liability Insurance evidencing its products liability coverage.

4. Confidential Information. NOW and Customer shall share reciprocal rights and obligations with respect to confidential information, and agree, during and after the term of this Agreement, to (a) not use or disclose any confidential information to any person other than Customer's or NOW's employees except to the extent necessary to perform their respective obligations under this Agreement; and (b) impose these obligations on anyone to whom it discloses the confidential information. Notwithstanding the foregoing, in the event either NOW or Customer receives a governmental request, subpoena or other legal demand for disclosure of any confidential information of the other, NOW or Customer shall notify the other, and both parties shall cooperate with one another to (c) abide by the law, but to (d) attempt to prevent any unnecessary disclosures in response to such legal demands and the like. Any disclosures compelled pursuant to Subparagraph 4(c) shall not be regarded as a breach of this Agreement. Any failure by either party to cooperate with the other party in regards to Subparagraphs 4(c) or (d) constitutes a waiver of any and all rights to enforce this Agreement, and all costs in complying with any such legal demand and the like shall be charged solely to the non-cooperating party.

5. Arbitration. Any dispute arising out of or in connection with this Agreement shall be finally and exclusively resolved by binding arbitration, with no right of appeal, in accordance with the rules of the American Arbitration Association. The number of arbitrators shall be one (1). The place of arbitration shall be Chicago, Illinois, and the governing law shall be the law of the State of Illinois. Each party shall bear its own attorneys' fees. Any additional costs, fees or expenses incurred in enforcing the arbitral award shall be charged against the party that resists its enforcement.

6. Term. This Agreement shall be effective for as long as Customer complies with all its material terms and conditions (and any amendments), unless terminated in accordance with Paragraph 7.

7. Termination. Either party shall have the right to terminate this Agreement, with or without cause, upon 30 days' written notice to the other party. Customer agrees that upon any such termination by either party and for any reason whatsoever, Customer will purchase all remaining private label inventory (i.e., labeled Products, labels and promotional materials) from Company at Customer's cost. The provisions of Paragraph 4 shall survive the termination of this Agreement.

8. Governing Law. This Agreement shall be governed exclusively by the law of the State of Illinois, including its provisions of the Uniform Commercial Code, and excluding its conflict of law rules.

9. Severability, Survivability and Entire Agreement. In the event that any provision of this Agreement is held invalid, illegal or unenforceable in any respect by a court or administrative body of competent jurisdiction, such provision shall be severed and the remaining provisions shall remain in full force and effect. This Agreement shall survive either party's dissolution or demise, and shall be binding upon the parties' heirs, successors and assigns, where permitted. This Agreement supersedes any former verbal or written agreements between the parties relating to private labeling or sales or distribution rights, and contains the entire and only agreement between the parties relating to the private labeling of Products.

NOW FOODS

By:

  
Peter Sokoloski  
Private Label Manager

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_