

## Article 1

**1 Definitions.** For purposes hereof, the following terms have the meanings indicated:

"Application" - as set out in Section 3.1.

"Finalists" - as set out in Section 3.4.

"License" - as defined in Section 4.2.

"License End Date" – as defined in Section 4.2.1.

"License Period" - as defined in Section 4.2.1.

"License Start Date" - as defined in Section 4.2.1.

"Organizer" - Product of the Year USA, Inc., a Delaware corporation located at 37 West 26<sup>th</sup> Street, Suite 307, New York, New York 10010.

"Products" - as defined in Section 2.3 and, in the singular, "Product".

"Program" - the marketing program owned and administered by the Organizer known as the "Voted – Product of the Year" program and as described in these Rules.

"Program Year" - the year referred to in the title of a Program (for example, the Program Year for "Voted – Product of the Year 2017" is 2017.

"Quarter" - each consecutive period of three calendar months, with the first Quarter commencing on the License Start Date, irrespective of the number of days of the first month of the first Quarter.

"Rules" – these Products of the Year terms and conditions set forth herein (Articles 1 through 6 and Schedule 1).

"Signatory" - the individual who signs these Rules electronically by clicking "Submit" in his own capacity or on behalf of another upon whose behalf he is authorized to act.

"TNS Research" – the independent research company: TNS Custom Research, Inc., a Pennsylvania corporation qualified in Illinois and having an office at Suite 2710, 500 West Monroe Street, Chicago, Illinois 60606.

"Trademarks" - the name and logo relating to "Voted – Product of the Year" or either of them as shown on Schedule 1 attached hereto.

"You", "Your" or "Yours" - either the Signatory or, where the Signatory signs these Rules on behalf of another, such other person or entity.

"USA" – as defined in Section 2.2.

## Article 2

**2.1 Term.** By clicking "Submit", You are signing, and consent to signing, these Rules electronically, and You are agreeing to be bound by these Rules and that You have created an agreement with the Organizer which will continue until terminated in accordance with Sections 4.4, 5.2 or 5.3.

**2.2 Program.** The Program is a proprietary, annual marketing program owned and administered by the Organizer which is open, subject to these Rules, to new Products offered for sale and sold in the United States and the District of Columbia ("USA").

**2.3 Products.** You may submit Products of the type typically sold and generally available in supermarkets, grocers, pharmacies, Quick Service Restaurants, and similar retail stores, including but not limited to foods, snacks, beverages, home care, personal care, health and beauty which are first offered for sale and sold by or on behalf of You to consumers in the USA between January 1, 2015 and November 30, 2016 ("Products"). Products should demonstrate innovations in design, function, packaging, ingredients or marketing.

**2.4 Categories.** The Organizer, in conjunction with TNS Research and depending upon the Applications received, will classify Products into categories within general areas such as: foods, snacks, beverages, home care, personal care, health and beauty, each of which will have a minimum of 2 and a maximum of 6 brands. The Organizer reserves the right to change, sub-categorize, add or withdraw any of the categories, depending on the Applications received, and to assign Products to the category it deems appropriate. Categories are determined on the basis of several factors, including commonality of product type and commonality of consumers who purchase products of that type. If the Organizer, in conjunction with TNS Research, determines that a Product does not fall within any of the designated categories, the Product will automatically be disqualified from the Program.

**2.5 Multiple Entries.** You may enter Products in different categories. If the Products are substantially similar, You may enter only one Product in any category in any Program Year. However, if the Products are different in some significant manner, You may enter more than one Product of the same brand in the same category. The Organizer has the discretion to (a) accept a Product into the Program or into any particular category, (b) assign Products to categories, and (c) determine if Products submitted are sufficiently different to warrant multiple entries in a category.

### Article 3

**3.1 Application.** Obtain an Application at [productoftheyearusa.com](http://productoftheyearusa.com), and submit your completed Application and all support materials including Product samples by September 15, 2016 to the Organizer at 37 West 26<sup>th</sup> Street, Suite 307, New York, New York 10010. You represent and warrant that all information provided by You as part of or in support of Your Application is legally permissible for use in advertising in the USA, and is true, accurate and complete in all respects and is in no way misleading or deceptive. Upon request, You will provide evidence to verify any claims contained in such information. Late submissions will not be considered. Organizer is not obligated to acknowledge receipt of submissions and may reject, in its discretion, any submission not in compliance with these Rules. Applications submitted become the property of the Organizer.

**3.2 Full Commitment.** By submitting a completed Application, You agree to be bound by these Rules, and to participate in the Program, and pay any fees that become due under Sections 5.2 and 5.3, and not to withdraw from the Program if a Product You submitted is nominated as a Finalist or is "Voted – Product of the Year".

**3.3 Confidential Information.** Except as otherwise provided in Sections 3.5 and 6.3 or as may be required by law, the Organizer will treat all information and documents submitted

as confidential and will not disclose or publish same without Your consent, except as required by law.

**3.4 Selection.** The selection of the "Voted – Product of the Year" Product for each category will be done in two steps as follows:

**3.4.1 Selection of Finalists.** The Organizer will select a panel of trade & consumer press, independent retail, design, manufacturing and advertising representatives to review the entries received and, based upon the innovative character of a Product in design, function, packaging or marketing, select no fewer than two nor more than six Products as finalists in each category ("Finalists"). The Organizer reserves the right to accept entries to consider as Finalists after the review of the panel of trade & consumer press, independent retail, design, manufacturing and advertising representatives, at its discretion.

**3.4.2 Consumer Vote.** The Product selected the "Voted – Product of the Year" Product in each category will be determined from among the Finalists in each category by the vote of a panel of consumers administered by the Organizer and TNS Research in accordance with industry standards. The consumer panel will consist of not less than 40,000 consumers. Product ratings for each category as to the extent of innovation will be based on a vote by the entire panel of consumers and a vote by those consumers that have purchased one or more of the Products. From the total votes cast, the Organizer will determine the "Voted – Product of the Year" Product in each category using a proprietary formula which incorporates both sets of votes.

**3.5 Use of Finalist/Winner's Products in Advertising and Promotion.** If Your product is selected a finalist or voted a winner, You authorize the Organizer to use and distribute Your product to advertise and promote the Voted - Product of the Year promotion in any medium or manner worldwide alone or in connection with the Trademarks without compensation. For purposes hereof, the term "use" includes but is not limited to any reproduction, photograph, illustration, film, video, digital reproduction or other depiction of Your product and its label, packaging and trademark, and the term "distribute" includes but is not limited to any "giveaway" of Your product whether to bloggers, media entrants or otherwise.

**3.6 Selection Context.** If Your product is selected as a Finalist, it means that it was selected as such from among those products within its designated category that participated in the Program and were not disqualified, and such selection does not mean that the product is a Finalist relative to other products within that category that may be generally available in the market place but that were not participants in the Program. Similarly, if Your product is "Voted - Product of the Year", it means that it was selected as such among the other products within its designated category selected as Finalists and not disqualified, and such selection does not mean that the product is a "Voted-Product of the Year" product relative to other products within that category that may be generally available in the market place but that were not participants in the Program.

**3.7 Disqualification.** The Organizer may (without prejudice to its other rights and remedies) disqualify any Product at any time where:

- 3.7.1** The Organizer considers that the Product does not meet the criteria in Article 2;
- 3.7.2** The Organizer considers that You have breached the second or third sentences of Section 3.1.
- 3.7.3** You do not make any payment due under these Rules;
- 3.7.4** There are bona fide safety or public health concerns regarding the Product; or
- 3.7.5** The Organizer has reasonable grounds for considering that the continued participation in the Program of the Product would damage the reputation and goodwill of the Program or the Trademark and if the disqualified Product is a Finalist or Voted - Product of the Year, all fees due under Sections 5.2 and 5.3 will remain due and payable regardless of its disqualification and no refund of fees will be made.

#### **Article 4**

**4.1 Organizer's Rights in the Trademarks.** You acknowledge that the Trademarks are the exclusive trademarks of the Organizer or its licensors. You agree not to apply for or obtain registration of the Trademarks for any goods or services in any jurisdiction, nor use the Trademarks or any name or mark confusingly similar to the Trademarks as a company, business, trade or brand name in any jurisdiction.

**4.2 Winning Product Trademarks License.** Subject to making the payments set out in Article 5, if Your Product is selected "Voted – Product of the Year" in a particular category, You will be granted a limited, revocable, non-transferable, non-assignable license to use the Trademarks only in the United States ("License") subject to the following rules and the Guidelines issued by the Organizer for the use of the Trademarks, which License, however, does not relieve You from complying with applicable laws and regulations:

**4.2.1** The term of the License ("License Period") begins on February 23, 2017 ("License Start Date") and ends on February 1, 2019 ("License End Date").

**4.2.2** You must obtain the Organizer's prior written approval for each use of the Trademarks in any advertising or marketing activity or for any commercial purpose, and comply at all times with the directions of the Organizer relating to such use. The Trademarks may only be used in the form and manner approved in advance, in each instance, in writing by the Organizer. The Organizer reserves the right to withhold such approval.

**4.2.3** You may use the Trademarks only on or in relation to a winning Product and that Product alone. Without the prior written approval of the Organizer in each instance obtained, You may not use the Trademarks on packaging or advertising which includes any other products.

**4.2.4** You may only use the Trademarks in advertising or marketing activities directed primarily to the USA audience and on Products or their packaging intended for sale within the USA. You are solely responsible that your advertising or marketing activities are in compliance with applicable USA laws and regulations. You agree to indemnify the Organizer and hold the Organizer harmless from any claims, losses and damages suffered or

incurred by the Organizer arising from Your advertising or marketing activities not being in compliance with applicable USA laws and regulations.

**4.2.5** The Trademarks may only be used in relation to a winning Product in the same form and composition as the Product described in, and submitted with, the Application.

**4.2.6** Every use of the Trademarks will be accompanied by a reference to the Program Year and category which the Product won. Specifically, every use of the Trademarks must specify that the Program Year for Your winning Product was 2017 in order to distinguish it from winning Products for Program Year 2018.

**4.2.7** The Organizer may, in its absolute discretion, permit the use of the Trademarks for groupings of some or all of the winning Products for the purpose of promotions directly or indirectly referring to “Products of the Year”.

**4.3 Termination of Use.** You must monitor use of the Trademarks under the License to ensure that the Trademarks are no longer used on any Product or in any advertising after the License End Date. In particular, You must stop manufacturing or ordering Products and packaging incorporating the Trademarks sufficiently prior to the License End Date so that all Products and packaging incorporating the Trademarks are likely to be sold before the License End Date. After the License End Date, You shall not, in or through any medium, offer to sell, sell, give away or otherwise distribute any Products on or in connection with which the Trademarks appear without the prior written approval of the Organizer in each instance obtained, which approval the Organizer may, in its complete discretion, deny or condition.

**4.4 Limitations on Use/Right to Terminate.** The Organizer, in its sole discretion, may terminate, immediately and without notice, the License in the event You breach any of the provisions of Article 4 without any obligation to refund any fees paid or payable pursuant to Article 5.

## **Article 5**

### **Fees**

**5.1** There is no fee to submit an Application but by submitting a completed Application, You agree to be bound by these Rules, and to participate in the Program, and pay any fees that become due under Sections 5.2 and 5.3, and not to withdraw from the Program if a Product you submitted is nominated as a Finalist or is "Voted-Product of the Year". Your failure to make timely payment of any amount due under Sections 5.2 or 5.3 constitutes a material breach of Your obligations under these Rules.

**5.2** You must pay the Organizer the sum of \$7,000 for each of Your Products selected as a Finalist in a category under Section 3.4 within sixty days after the invoice date. Failure to make such payment may, at the discretion of the Organizer, result in all of Your Products being disqualified from the Program and, upon the Organizer giving You written notice, this Agreement being terminated immediately. Your liability to make any payment due hereunder survives the termination of the Agreement. For this payment, You will receive the general aggregated final results of the market research report prepared by TNS Research, together with more specific results for the category within which Your Product was selected, subject to applicable privacy laws. The Organizer will deliver these results to You subsequent to Your payment and TNS Research's completion of the market research report.

**5.3** You must pay the Organizer the additional sum of \$63,000 for each of Your Products selected a “Voted – Product of the Year” Product in a category in consideration for the grant of the License under Section 4.2. Payment is due within sixty days after the invoice date. Upon receipt of this payment, You can use the Trademarks in accordance with Article 4 above. Unless otherwise agreed with the Organizer, You can not make use of the Trademarks prior to payment. Failure to make such payment may, at the discretion of the Organizer, result in all of Your Products being disqualified from the Program and, upon the Organizer giving You written notice, this Agreement being terminated immediately. Your liability to make any payment due hereunder survives the termination of this Agreement.

## **Article 6**

**6.1 Force Majeure.** The Organizer is not liable for failure to perform any obligation under these Rules to the extent caused by any forces beyond its control including, but not limited to, the failure of TNS Research to deliver its market research report on the consumer votes to the Organizer to permit the Organizer to complete the Program as described in these Rules.

**6.2 Agreement to Rules.** By clicking "Submit" You acknowledge having read these Rules and Your agreement to be bound by them.

**6.3 Agreement to Use of Name.** If You have one or more Products selected as Finalists You permit the Organizer to mention Your name, address and a description of the Finalist Products, together with a qualitative analysis of the results of the consumer panel survey conducted by or on behalf of the Organizer under Section 3.4.2 as part of the promotion of the Program, without additional consideration unless prohibited by law.

**6.4 Reservation of Rights.** The Organizer retains the right to resolve questions relating to the Program and these Rules.

**6.5 Construction.** Whenever the singular number is used in these Rules and when required by the context, the same will include the plural and vice versa, and the masculine gender shall include the feminine and neuter and vice versa.

**6.6 Headings.** The headings in these Rules are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of these rules or any of their provisions.

**6.7 Severability.** If any provision of these Rules will be invalid, illegal, or unenforceable to any extent, the remainder of these Rules and their application will not be affected and will be enforceable to the fullest extent permitted by law unless the provision held to be illegal, invalid or unenforceable is so fundamental to the sense of these Rules that its illegality, invalidity or unenforceability would make the enforceability of the remainder unreasonable.

**6.8 Entire Agreement.** These Rules and the documents referred to in them constitute the entire agreement between You and the Organizer and supersede all other agreements or arrangements, whether written or oral, express or implied, between You and the Organizer.

**6.9 Successors and Assigns.** These Rules are binding upon the Organizer and You and upon Your respective successors and permitted assigns. The Organizer may assign, subcontract or otherwise transfer all or any part of its rights and obligations under this agreement. You may not assign all or any part of your rights or obligations under this agreement without the prior written consent of the Organizer. Any assignment by You in violation of the preceding sentence shall be null and void.

**6.10 No Waiver.** Neither You nor the Organizer will be affected by any delay or failure in exercising or any partial exercising of any rights under these Rules.

**6.11 Taxes.** All payments You make under these Rules are exclusive of applicable taxes which You must, where applicable, also pay.

**6.12 Remedies.** The rights, powers and remedies provided in these Rules are cumulative and not exclusive of any rights, powers and remedies provided by law. The exercise or partial exercise of any right, power or remedy provided by law or under these Rules will not preclude any other or further exercise of them or the exercise of any other right, power or remedy.

**6.13 Authority to Execute.** The Signatory represents and warrants that he is empowered to submit these Rules and the Application and that all necessary action to authorize their execution has been taken.

**6.14 Governing Law and Jurisdiction.** These Rules are to be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws provisions and the courts of New York are to have jurisdiction to settle any dispute in connection with these Rules. By submitting an Application, You consent and submit to the jurisdiction of any federal or state court located in New York County.

#### **SCHEDULE 1**

#### **TRADEMARKS**

