

84.51 LLC
STANDARD TERMS AND CONDITIONS
NON-STRATUM SERVICES

This Agreement for Non-Stratum Services is made by and between _____ (“Company”) and 84.51 LLC (“Service Provider”), collectively the “Parties” as of the Effective Date.

This Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Project Brief for Additional Services. This Agreement may be executed in one or more counterparts, all of which shall be deemed one and the same agreement, and shall become effective on the Effective Date.

The Agreement is subject to these terms and conditions.

1. Definitions

As used herein, the following words shall have the following meanings:

“84.51°” means 84.51 LLC, an Ohio limited liability company.

“Affiliate” means any entity which directly or indirectly via one or more intermediaries or other entities controls, is controlled by, or is under common control with, another entity. For purposes of this definition, “control” (and, with correlative meanings, the terms “controlled by” and “under common control with”) means, (a) in the case of a corporate entity (e.g., a C Corp, S Corp or LLC) the direct or indirect ownership by one entity of more than 50% of the outstanding voting equity interests of another entity; and (b) in the case of any type of entity, corporate or otherwise, an interest that results in the ability or power of one entity to (i) direct or cause the direction of the management and policies of another entity, or (ii) appoint more than 50% of the members of the governing body of another entity.

“Agreement” means a project brief, statement of work or other written agreement for 84.51° to provide Services to the Company, including any appendices, which incorporates these Standard Terms and Conditions for Non-Stratum Services. An Agreement will be deemed to exist following the receipt and acceptance by 84.51° of a correctly completed and signed Agreement from the Company. References to “the Agreement” or “this Agreement” will mean each such Agreement.

“Confidential Information” means any and all information in whatever form, whether disclosed orally or in writing and whether eye readable or machine readable, (a) that is made available by one party or its Affiliates (in such capacity the “Disclosing Party”) to the other party or its Affiliates (in such capacity the “Receiving Party”) or which is gained by the visit by the Receiving Party to any premises of the Disclosing Party; and (b) which by its nature is confidential or ought to be recognized as confidential or proprietary, even if not marked with “Confidential” or “Proprietary” or words of similar import. Confidential Information includes, without limitation, specifications and technical literature, financial or commercial information, this Agreement, the Documentation, the Improvements, the IP and the Deliverables. Confidential Information excludes information which is (a) known to the Receiving Party prior to disclosure without an obligation of confidentiality, (b) rightfully obtained by the Receiving Party without restriction from a third party, (c) already within the public domain, or (d) developed by the Receiving Party without reference to or use of the Disclosing Party’s Confidential Information.

“Company” means that party named in the Agreement.

“Deliverables” means the reports, data, materials, physical media, goods and other work product of the Services.

“Documentation” means any documentation provided at any time by 84.51° to the Company or its Affiliates to describe or provide detail with respect to the Services, whether in printed or on-line, CD-Rom or other electronic format.

“Fee” means that amount set out in the Agreement and which represents 84.51°’s compensation for the Services.

“Improvements” means all improvements or modifications to 84.51°’s IP, the Services, the Deliverables or the Documentation.

“IP” means all types of intellectual property, whether or not capable of being registered, including copyrights, patents, trademarks, trade secrets, database rights, know-how, methodologies, algorithms, formats, software, tools, data structures, and design protocols.

“IP Rights” means all ownership and proprietary rights in IP.

“Kroger” means The Kroger Co. and any of its affiliates.

“Purchase Order Information” means the information set forth in the Agreement which provides the details, forms, procedures or information that 84.51° must submit or follow, based on the Company’s internal procedures, in order for the Company to process and pay 84.51°’s invoices (e.g., a purchase order number).

“Services” means those services to be provided by 84.51° to the Company as set out in the Agreement.

“Taxes” means all sales, excise or other taxes imposed on the sale, provision or use of the Services or the Deliverables, other than 84.51°’s income taxes and property taxes on the equipment used by 84.51° to provide the Services.

2. 84.51°’s Obligations

2.1 The Agreement will set out the particulars for provision of the Services and the Deliverables. 84.51° will provide the Services to the Company and deliver the Deliverables in accordance with the Agreement.

3. License

3.1 In consideration of the Company’s payment of the Fee, 84.51° grants to the Company and its Affiliates a non-exclusive, non-transferable license to use the Deliverables solely for the Company’s and its Affiliates’ internal business purposes.

3.2 Neither the Company nor its Affiliates shall sublicense the Services or the Deliverables or in any way allow access

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thereto (including Documentation) or to any information derived therefrom to any third party without 84.51°'s prior written consent; provided, however, that the Company and its Affiliates may share the Deliverables with Kroger.

- 3.3 Neither the Company nor its Affiliates shall, directly or indirectly through a third party, (a) decompile, reverse engineer, disassemble or otherwise reduce any part of the Deliverables to human readable form, or (b) export or otherwise use any data from any of the Deliverables in any other application or report without 84.51°'s prior written consent.
- 3.4 Company shall not share the Reports or Deliverables or any insights with a third party unless the parties have executed a Contractor Usage Agreement.
- 3.5 Company may only share Shopper Insights with third parties (including another retailer) if they comply with the Data Sharing and Masking Guidelines set forth in Appendix 1.

4. Proprietary Rights

- 4.1 The Improvements, the Services, the Deliverables, and the Documentation are and will be the IP of 84.51° and its licensors, who will retain all IP Rights with respect thereto. For the avoidance of doubt, 84.51° will have all IP Rights with respect to any IP embodied in or used in (or created during the provision of) the Services or in the Deliverables. This Agreement does not grant the Company or its Affiliates any license or right to use any other IP that 84.51° may own, have licensed rights to, or otherwise control.
- 4.2 The Company and its Affiliates shall follow all reasonable instructions given by 84.51° from time to time with regard to 84.51°'s or its licensors' IP Rights, including without limitation proper use, attribution and indications of property rights.
- 4.3 The Company will promptly disclose to 84.51° any Improvements made, conceived of or suggested by the Company or its Affiliates. All IP Rights with respect to Improvements will be assigned by the Company (and to the extent necessary, the Company's Affiliates and their employees, agents, independent contractors and officers) to 84.51°. Upon the request of 84.51° and at 84.51°'s expense, the Company shall provide reasonable assistance to prepare all filings with respect to such assigned rights, record such assignments and obtain necessary signatures and other information related thereto.
- 4.4 84.51° shall defend, indemnify (including settling at its own expense) and hold the Company and its Affiliates harmless from and against any third-party claim made against the Company or its Affiliates that utilization of the Deliverables or the Services infringes third party IP Rights enforceable in the United States (a "Claim"). 84.51°'s indemnity obligation is subject to the following conditions: (a) the Claim must not result from or be attributable to the breach of this Agreement by the Company or its Affiliates; (b) the Company must give 84.51° prompt written notice of

a Claim; (c) 84.51° must have exclusive control of the defense of the Claim; and (d) the Company and its Affiliates must cooperate in the defense of the Claim and provide all information in their possession or control that may be requested by 84.51°, at 84.51°'s expense. Should 84.51°'s ability to provide the Services to the Company or its Affiliates (or the Company's or its Affiliates' ability to utilize the Deliverables), be enjoined or otherwise restricted due to a Claim, 84.51° shall, at its option, either procure the right to continue providing the Services (or for the Company or its Affiliates to continue using the Services or Deliverables), replace or modify the Services or Deliverables to make them non-infringing, or if neither of the foregoing is reasonably feasible in 84.51°'s opinion, 84.51° may terminate this Agreement immediately and without any further liability other than to refund the Company the unearned portion of any Fees paid in advance. This clause sets forth the exclusive remedy available to the Company and its Affiliates against 84.51° or its licensors for a Claim.

5. Price and Payments

- 5.1 It will be the Company's responsibility to provide 84.51° with Purchase Order Information, which must be reasonable in scope and agreed to by 84.51° prior to the commencement of Services. The Company must also provide 84.51° with sufficient notice of any changes to the Purchase Order Information. No additional terms and conditions in any Purchase Order Information will become part of the Agreement, and all such terms are hereby rejected by 84.51°. The Company may not withhold payment of any invoice on the basis of failure by 84.51° to comply with the Purchase Order Information unless 84.51° has received and agreed to comply with them and thereafter fails to do so.
- 5.2 84.51° shall submit an invoice or invoices to the Company in respect of the Fee as set out in the Agreement. 84.51° will also invoice the Company for its reasonable and necessary travel and other out-of-pocket expenses incurred in providing the Services (an estimate of such expenses will be provided to the Company for prior approval). 84.51° will include on any invoice any Purchase Order Information.
- 5.3 All invoices will be due and payable, without any setoff, deduction or withholding whatsoever, no later than thirty (30) calendar days after the date of invoice ("the Due Date"). If payment is not made in full by the Due Date 84.51° shall, in its discretion and without limiting any other rights it might have under the Agreement or under the law, be entitled to take one or both of the following measures until payment in full is received: (a) immediately suspend provision of the Services without the suspension being considered as a termination of the Agreement; or (b) charge interest on overdue amounts at a default rate equal to 3% above the prime rate of interest as published in the Wall Street Journal from time to time, but not exceeding the maximum interest rate permitted by law.

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5.4 All Fees are exclusive of Taxes, and 84.51° will endeavor to include any Taxes as a separate line item on its invoices. The Company will be responsible for the payment of all Taxes, whether or not reflected on 84.51°'s invoices.

6. Warranties and Disclaimers

6.1 84.51° does not warrant that the Services or the Deliverables will meet the Company's or its Affiliates' requirements or that the Services or the Deliverables will be error free. Any liability that 84.51° may have to the Company or its Affiliates for breach of warranty will be subject to the limitations of liability set forth herein.

6.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, ARE HEREBY EXCLUDED TO THE EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. Termination

7.1 Either party may terminate this Agreement upon thirty (30) days written notice if the other party is in material breach of this Agreement and fails to cure such breach to the non-breaching party's satisfaction within such notice period.

7.2 84.51° reserves the right to suspend all or any portion of the Services, effective immediately upon notice to the Company, if 84.51° believes such action is necessary to protect its IP.

7.3 Either party may terminate the Agreement effective immediately upon notice to the other party if the other party: (a) becomes the subject of any order or other process calling for the appointment of a receiver, administrator, trustee, nominee or other similar official; (b) is wound up or dissolved, becomes or is declared insolvent; (c) is involved as a debtor, voluntarily or involuntarily, in any proceeding for relief under the Federal Bankruptcy Code (or any statutory re-enactment or modification thereof); or (d) ceases to or threatens to cease to carry on all or a substantial part of its business.

7.4 Termination or expiration of this Agreement shall not prejudice any rights of either party which have arisen on or before the date of termination. The provisions of this Agreement which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties.

7.5 If this Agreement is terminated for any reason other than Company's breach, 84.51° will refund to Company any prepaid Fees on a prorated basis.

8. Limitation of Liability

8.1 The liability of 84.51° and its licensors to the Company and its Affiliates (or any third party claiming through the Company or its Affiliates, via indemnity or otherwise) arising from the Services, use of the Deliverables, or

84.51°'s breach of this Agreement, however caused and whether the claim arises in contract, tort, breach of warranty, strict liability, negligence or other theory of liability shall, to the maximum extent permitted at law, be limited to direct damages actually incurred and will not exceed the Fee collected by 84.51° for the specific Service or Deliverable giving rise to the liability.

8.2 In no event will 84.51° or its licensors be liable to the Company or its Affiliates (or any third party claiming through the Company or its Affiliates, via indemnity or otherwise) for any indirect, incidental, special or consequential damages, including damages for loss of profits, revenue, data or data use, even if 84.51° is or was advised of the possibility of such damages.

8.3 The limitations on liability set forth in this Clause are of the essence of this Agreement and are the basis on which the Fees were determined.

9. Confidential Information

9.1 A Receiving Party will not disclose the Disclosing Party's Confidential Information to any third party nor use such Confidential Information in any manner not permitted by this Agreement. Disclosure by a Receiving Party to its Affiliates will be permitted but the Receiving Party will be responsible for any breach of these confidentiality obligations by its Affiliates. Notwithstanding the foregoing, the Company may share Deliverables with Kroger.

9.2 A Receiving Party will disclose the Disclosing Party's Confidential Information to its employees only on a "need to know" basis. A Receiving Party will be liable for any breach of these confidentiality obligations by its employees.

9.3 Notwithstanding the foregoing, a Receiving Party may disclose a Disclosing Party's Confidential Information as a result of governmental or legal requirements, provided that reasonable notice is first given to the Disclosing Party and all reasonable non-financial cooperation is given in order to allow the Disclosing Party to seek a protective order.

9.4 Notwithstanding the foregoing, each party may reveal to third parties that a relationship exists between the Company and 84.51°, without revealing the scope, content or any other Confidential Information related to the engagement.

9.5 Any permitted use of the Deliverables or other 84.51° Confidential Information by the Company or its Affiliates must comply with 84.51°'s instructions with respect to masking or revealing the source. Data Sharing and Masking Guidelines are listed in Appendix 1.

10. Non-Solicitation

Neither party (including its Affiliates) will solicit for employment or hire employees of the other party (or its Affiliates) during the term of the Agreement. This restriction will not apply where (as shown by written records or other reasonable evidence) the person is

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employed as a result of an open market employment campaign without direct solicitation of the employee or if the employee is referred on an unsolicited basis by an employment agency.

11. Force Majeure

Neither party shall be held liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for failure or delay in fulfilling or performing any of its obligations under this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party (a “Force Majeure Event”) including, but not limited to, any act of God, fire, natural disaster, accident, terrorism, war, acts of war (whether war be declared or not), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances or any acts, omissions or delays in activity by any governmental authority. The Company may not (a) invoke a Force Majeure Event to justify a non-payment of the Fees or (b) invoke a Force Majeure Event affecting one of its Affiliates as an excuse for its delayed performance or non-performance. The party prevented or delayed in performing because of a Force Majeure Event will promptly notify the other party of the circumstances thereof and, if possible, provide a projected duration of the Force Majeure Event. If the Force Majeure Event continues for longer than three consecutive months, either party will thereafter have the option of terminating this Agreement immediately upon written notice to the other party without any resulting liability for early termination.

12. General Provisions

12.1 This Agreement constitutes the entire understanding between the parties, and supersedes all prior agreements and understandings between the parties, concerning its subject matter. No provision, right or obligation under this Agreement may be modified, assigned, delegated or

waived, whether by operation of law or otherwise, unless done pursuant to a writing signed by an authorized representative of each party.

- 12.2 Notices under this Agreement must be in writing and may be served either personally (hand-delivery) or by registered or certified mail, return receipt requested, to the address of the parties stated in the Agreement, or to any other addresses as may have been properly notified by one party to the other. Any notice served personally will be deemed to have been delivered on the first business day following its dispatch. Notwithstanding the foregoing, the party serving notice also agrees to contact the other party by telephone or e-mail if the message is time critical.
- 12.3 The Company shall nominate a representative, as indicated on the Agreement, who shall be responsible for interfacing with 84.51°’s account manager or director, and the Company shall be bound by all decisions such representative makes on the Company’s behalf. The Company may change the name of such representative with prior notice to 84.51°.
- 12.4 Nothing in this Agreement shall create any association, partnership, joint venture, employer-employee or agent-principal relationship between the parties.
- 12.5 If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect.
- 12.6 This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Ohio, excluding its conflicts of law provisions. Any dispute arising under this Agreement which is not otherwise resolved between the parties will be submitted for resolution exclusively before any federal or state courts situated in Hamilton County, Ohio, and both parties consent and submit to the exclusive jurisdiction and venue of such courts. Notwithstanding the foregoing, either party may seek injunctive relief to protect its interests before any court of competent jurisdiction.

This Agreement is executed by the Parties on the dates indicated below, effective as of the last signature date (“Effective Date”).

ACCEPTED AND AGREED

For and on behalf of
84.51 LLC

Signature: _____

Print Name: _____

Title: _____

Date: _____

ACCEPTED AND AGREED

For and on behalf of
[insert full legal name of Company]

Signature: _____

Print Name: _____

Title: _____

Date: _____

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Appendix 1

Data Sharing and Masking Principles

Company Sharing with...	Sharing Principle
Kroger	All data and insights can be shared
Other CPGs	<ol style="list-style-type: none"> 1. If the CPG meets the definition of Affiliate, then all data and insights can be shared. 2. For all other CPGs, sharing is permitted only at the direction of Kroger.
Other Retailers	<p><u>What cannot be shared:</u></p> <ul style="list-style-type: none"> • Absolute numbers, relative data, store level data, custom store groups that replicate competitor trade areas, views of 84.51° reports, 84.51° colors, and Kroger profile terminology • <i>Any form of these metrics:</i> Point of Sale (POS), Gross Margin, Item Cost, Store Inventory, Warehouse Inventory • <i>Any form of these classes of metrics:</i> Budget, Baseline/Turn/Incremental, Promotional Evaluation • <i>Any data or insights related to the following channels / modality:</i> Pickup, Delivery, or Ship • Any future data, such as upcoming promotional schedules <p><u>What can be shared:</u></p> <ul style="list-style-type: none"> • <i>Other than for the data noted above,</i> Customer may share conclusions, recommendations, implications, and ranges of relative data, including aggregated store test results. <ul style="list-style-type: none"> ○ All shared data must adhere to the masking principles outlined at the bottom of this Appendix.
All other third parties not listed elsewhere in this Appendix including, but not limited to: Distributors, Brokers, Market Research, Consultants, Analyst firms, Shopper Marketing, Public Relations, and Ad Agencies	Sharing is allowed only if both of the following are true: <ul style="list-style-type: none"> • 84.51° gives permission • the third party signs a contractor usage agreement with 84.51° and the Customer
Public (to the media)	All sharing is prohibited unless permission given by 84.51° (including legal approval)