

# RECORDATION FORM COVER SHEET PATENTS ONLY

Atty Ref/Docket No.: P5691

Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

The Pillsbury Company

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

## 3. Nature of conveyance:

☐ Assignment ☐ Merger☐ Security Agreement ☐ Change of Name☒ Other: Contribution Agreement

Execution Date: June 12, 2003

## 2. Name and address of receiving party(ies):

Name: General Mills Marketing, Inc.

Street Address: c/o General Mills, Inc.  
Number One General Mills Boulevard

City: Minneapolis State: Minnesota Zip: 55426

Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

Serial No. 10/224,545, filed August 19, 2002

B. Patent No.(s)

6,919,098

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Douglas J. Taylor

Address:

General Mills, Inc.  
Number One General Mills Blvd.  
Minneapolis, MN 55426

## 6. Total number of applications and patents involved: 1

## 7. Total fee (37 CFR 3.41): \$40.00

☒ Enclosed☒ Authorization to charge \$40.00 to Deposit Account No. 07-0900 to cover the Recording fee.

## 8. Please charge any additional fees or credit any over payments to our Deposit Account No.: 07-0900

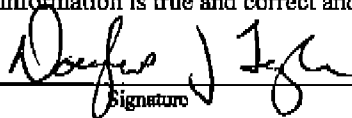
## DO NOT USE THIS SPACE

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Douglas J. Taylor, Reg. No. 32,945

Name of Person Signing



Signature

10-7-08

Date

Total number of pages including cover sheet: 16

Mail or fax documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Mail Stop Assignment Recordation Services  
P.O. Box 1450  
Alexandria, VA 22313-1450  
(571) 273-0140

## CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "*Agreement*") is dated as of June 12, 2003 by and between The Pillsbury Company, a Delaware corporation ("*TPC*" and "*Contributing Party*"), and General Mills Marketing, Inc., a Delaware corporation ("*General Mills Marketing*" and the "*Company*"). This Agreement is effective as of the date hereof (the "*Contribution Date*"). Capitalized terms not defined where they appear in the text of this Agreement shall have the meanings specified in Article IV.

### RECITALS

WHEREAS, TPC currently owns, beneficially and of record, 13.37 shares, par value \$0.01 per share, of Class B common stock of General Mills Marketing.

WHEREAS, Contributing Party will contribute to the Company (A)(1) the Intellectual Property Rights owned by Contributing Party as set forth on Schedule 2.02(a) hereto that are used by Contributing Party in connection with the manufacture, marketing and sale of packaged food products and (2) all goodwill associated with the foregoing, including rights to all remedies for past and future violations thereof (collectively, the "*TPC IP*"), and (B) 100% of the issued and outstanding capital stock of HDIP, Inc., a Delaware company (the "*HDIP Stock*" and together with the TPC IP, the "*Contributed Assets*"), in exchange for 6.58 shares of the Class B common stock, par value \$0.01 per share, of the Company (the "*Class B Common Stock*").

WHEREAS, the contribution by the Contributing Party is subject to the terms and conditions of this Agreement and the Certificate of Incorporation of General Mills Marketing, dated September 28, 2000, as amended (the "*Certificate of Incorporation*").

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, Contributing Party and the Company agree as follows:

### ARTICLE I CONTRIBUTIONS BY CONTRIBUTING PARTY

#### Section 1.01 Contribution and Assignment by Contributing Party.

(a) Subject to the terms and conditions of this Agreement and the Certificate of Incorporation, with effect from and including the Contribution Date, as a contribution to the Company in exchange for 6.58 shares of Class B Common Stock, Contributing Party hereby grants, conveys, assigns, transfers and delivers to the Company, as a contribution, free and clear of all Encumbrances, except for Permitted Encumbrances, all of Contributing Party's right, title and interest in, to and under the Contributed Assets.

(b) The Company hereby accepts the foregoing contribution and assignment.

### Section 1.02 Issuance of the Class B Common Stock.

In exchange for the contributions to be made by Contributing Party pursuant to Section 1.01(a), the Company will issue to Contributing Party 6.58 shares of Class B Common Stock on the Contribution Date, the fair market value of which is \$1,110,000,000 and, immediately following such issuance, will cause Contributing Party to be recorded on its books and records as the holder of such Class B Common Stock. Contributing Party hereby acknowledges that it has received notice of the restrictions on transfer of the Class B Common Stock, if any.

### Section 1.03 Additional Documents.

This Agreement is deemed to constitute such deed, endorsement, assignment or other instrument of conveyance, transfer or assignment as shall be necessary in order to effect the transfer, assignment and conveyance to the Company of all right, title and interest of TPC in the Contributed Assets. To further effect the contribution of the Contributed Assets as contemplated in Section 1.01, TPC shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, consents and assurances, in each case dated as of the Contribution Date, and shall make such filings, assignments and registrations, as shall be necessary or appropriate to convey, assign, transfer, set over and deliver to, and to vest, perfect and confirm in, the Company all of TPC's right, title and interest in and to the Contributed Assets, including, but not limited to, any filings, assignments and registrations to be made in the U.S. Patent and Trademark Office.

## **ARTICLE II** **REPRESENTATIONS AND WARRANTIES**

### Section 2.01 Contributing Party.

Contributing Party represents and warrants that as of the date hereof:

(a) Organization. Contributing Party is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware with all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted.

(b) Qualification. Contributing Party is duly licensed or qualified to do business as a foreign corporation and is in good standing in all jurisdictions in which the property owned or leased by it or the activities conducted by it requires it to be so qualified (except where the failure to so qualify would not have a Material Adverse Effect with respect to Contributing Party).

(c) Authority. (i) Contributing Party has the corporate power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and to consummate the transactions contemplated hereby, (ii) the execution and delivery by Contributing Party of this Agreement and the consummation of the transactions contemplated

hereby have been duly authorized by all necessary corporate action, (iii) no other corporate action on the part of Contributing Party or any other Person or entity, whether pursuant to the certificate of incorporation or bylaws of Contributing Party or otherwise, are necessary to authorize Contributing Party to enter into this Agreement or to consummate the transactions contemplated hereby, (iv) this Agreement has been duly executed and delivered by Contributing Party, and (v) this Agreement is the legal, valid and binding obligation of Contributing Party, enforceable against Contributing Party, in accordance with its terms (except to the extent that enforcement is affected by Laws pertaining to bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and by the availability of injunctive relief, specific performance and other equitable remedies (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(d) No Violation. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby (i) other than filings, assignments, and registrations to be made with the U.S. Patent and Trademark Office, the U.S. Copyright Office, and any other domestic or foreign governmental authority or agency, requires any filing or registration with, notification to, permission of or any action or order by any governmental or regulatory authority with respect to Contributing Party, (ii)(A) violates or, to the knowledge of Contributing Party, will violate any order, writ, injunction, judgment, decrees or award or (B) to the knowledge of Contributing Party, violates or will violate or conflict with any Law, in either case, of any governmental or regulatory authority to which Contributing Party or any of its properties or assets or its businesses are subject as of the Contribution Date, (iii) violates or will violate, or conflicts with or will conflict with any provision of, or constitutes a default under, the certificate of incorporation or bylaws of Contributing Party or (iv)(A) conflicts with, violates, breaches or constitutes a material default (or an event which, with notice or lapse of time or both, would constitute a material default) under, requires any consent under, or gives rise to a right to terminate, amend, accelerate, suspend, revoke or cancel any mortgage, contract, agreement, deed of trust, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which Contributing Party is a party or by which its properties may be bound or (B) will cause, or give any Person grounds to cause, an acceleration (with notice or lapse of time or both) of the maturity of, or will increase, any liability or obligation of Contributing Party and in the case of either clause (iv)(A) or (iv)(B) above, which conflict, violation, breach, default, liability or obligation, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect in respect of Contributing Party or the Company.

(e) Litigation. There are no actions, suits, claims or proceedings ("Actions") pending or, to the knowledge of Contributing Party, threatened against or involving Contributing Party or any of its Affiliates, which individually or in the aggregate have, or could reasonably be expected to have, a Material Adverse Effect with respect to Contributing Party, any of its Affiliates, or the Company. There are no Actions pending or, to the knowledge of Contributing Party, threatened, that question, affect or challenge the validity, legality or enforceability of this Agreement or any action taken or to be taken by Contributing Party pursuant to this Agreement or in connection with the transactions contemplated hereby.

(f) Title to TPC IP.

Contributing Party hereby represents and warrants, with respect to the TPC IP, that:

(i) Contributing Party has good and marketable title to the TPC IP, in each case free and clear of all Encumbrances, except for Permitted Encumbrances;

(ii) Contributing Party will defend its title or interest thereto or therein against any and all Encumbrances, except for Permitted Encumbrances, however arising, of all persons whomsoever; and

(iii) following the consummation of the transactions contemplated by this Agreement, the Company will own the TPC IP free and clear of all Encumbrances, except for Permitted Encumbrances.

(g) Title to HDIP Stock.

Contributing Party hereby represents and warrants, with respect to the HDIP Stock, that:

(i) Contributing Party has good and marketable title to 100% of the HDIP Stock free and clear of all Encumbrances, except for Permitted Encumbrances;

(ii) Contributing Party will defend its title or interest thereto or therein against any and all Encumbrances, except for Permitted Encumbrances, however arising, of all persons whomsoever; and

(iii) following the consummation of the transactions contemplated by this Agreement, the Company will own the HDIP Stock free and clear of all Encumbrances, except for Permitted Encumbrances.

Section 2.02 TPC IP.

Contributing Party hereby represents and warrants that as of the date hereof:

(a) Schedule 2.02(a) contains a list of all of the TPC IP owned by Contributing Party to be transferred pursuant to this Agreement.

(b) Schedule 2.02(b) contains a list of all of the TPC IP licensed by Contributing Party to be transferred pursuant to this Agreement.

(c) After the consummation of the transactions contemplated by this Agreement, the Company shall have the right to use such TPC IP to the same extent it is currently used by Contributing Party.

(d) Schedule 2.02(d) sets forth all material licenses, agreements, undertakings, declarations, and limitations to which the TPC IP to be transferred pursuant to this Agreement is subject (the "*Existing Encumbrances*").

(c) Schedule 2.02(e) sets forth all material consents required for the assignments or transfers of the TPC IP contemplated herein (the "*Required Consents*").

(f) There is no material violation of any Law relating to the TPC IP.

(g) No Action has been made or asserted or is pending and, to the best knowledge of Contributing Party after due inquiry, no such Action has been threatened against Contributing Party either (i) based upon or challenging or seeking to deny or restrict the use by Contributing Party of any of the TPC IP or (ii) alleging that any services provided, or products manufactured or sold, or intangible property being licensed or used, are being manufactured, sold, provided, licensed or used in violation of any Intellectual Property Rights that infringe, upon the TPC IP or upon Contributing Party's rights therein.

(h) Compliance with Applicable Law; Adverse Restrictions. The operations of Contributing Party relating to the TPC IP are being conducted by Contributing Party in material compliance with (i) all applicable permits and orders, writs, injunctions, judgments, decrees or awards of all courts and (ii) all Laws, which are applicable to Contributing Party, or the TPC IP (including, without limitation, those related to public or occupational safety, and all environmental laws). Contributing Party has not received any written notification of any asserted present failure to comply with any Law, except for failures which would not or would not reasonably be expected to have a material adverse effect on the ability of Contributing Party or, following the Contribution Date, the Company to own and use the TPC IP in the manner in which they are currently owned and used, and which Contributing Party is taking steps to correct or contest in good faith.

#### Section 2.03 The Company.

The Company represents and warrants that as of the date hereof:

(a) Class B Common Stock. The Class B Common Stock has been duly authorized and upon issuance to TPC, will be validly issued, fully paid and nonassessable.

(b) Organization. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware with all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted.

(c) Qualification. The Company is duly licensed or qualified to do business as a foreign corporation and is in good standing in all jurisdictions in which the property owned or leased by it or the activities conducted by it requires it to be so qualified (except where the failure to so qualify would not have a Material Adverse Effect with respect to the Company).

(d) Authority. (i) The Company has the corporate power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and to consummate the transactions contemplated hereby, (ii) the execution and delivery by the Company of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action, (iii) no other corporate action on the part of the Company or any other Person or entity, whether pursuant to the certificate of incorporation

or bylaws of the Company or otherwise, are necessary to authorize the Company to enter into this Agreement or to consummate the transactions contemplated hereby, (iv) this Agreement has been duly executed and delivered by the Company, and (v) this Agreement is the legal, valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms (except to the extent that enforcement is affected by Laws pertaining to bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and by the availability of injunctive relief, specific performance and other equitable remedies (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(e) No Violation. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby (i) other than filings, assignments and registrations to be made with the U.S. Patent and Trademark Office, the U.S. Copyright Office, and any other domestic or foreign governmental authority or agency, requires any filing or registration with, notification to, permission of or any action or order by any governmental or regulatory authority with respect to the Company, (ii)(A) violates or, to the knowledge of the Company, will violate any order, writ, injunction, judgment, decrees or award or (B) to the knowledge of the Company, violates or will violate or conflict with any Law, in either case, of any governmental or regulatory authority to which the Company or any of its properties or assets or its businesses are subject as of the Contribution Date, (iii) violates or will violate, or conflicts with or will conflict with any provision of, or constitutes a default under, the certificate of incorporation or bylaws of the Company or (iv)(A) conflicts with, violates, breaches or constitutes a material default (or an event which, with notice or lapse of time or both, would constitute a material default) under, requires any consent under, or gives rise to a right to terminate, amend, accelerate, suspend, revoke or cancel any mortgage, contract, agreement, deed of trust, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which the Company is a party or by which its properties may be bound or (B) will cause, or give any Person grounds to cause, an acceleration (with notice or lapse of time or both) of the maturity of, or will increase, any liability or obligation of the Company and in the case of either clause (iv)(A) or (iv)(B) above, which conflict, violation, breach, default, liability or obligation, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect in respect of Contributing Party or the Company.

(f) Litigation. There are no Actions pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Affiliates, which individually or in the aggregate have, or could reasonably be expected to have, a Material Adverse Effect with respect to the Company, any of its Affiliates, or Contributing Party. There are no Actions pending or, to the knowledge of the Company, threatened, that question, affect or challenge the validity, legality or enforceability of this Agreement or any action taken or to be taken by the Company pursuant to this Agreement or in connection with the transactions contemplated hereby.

#### Section 2.04 Consents; Filings

Contributing Party has obtained and made or will obtain and make at the earliest practicable date hereafter, but no later than six months after the Contribution Date, all

Required Consents, approvals, authorizations, filings and registrations necessary to the consummation of the transactions contemplated by this Agreement.

Section 2.05 Transfer Costs.

Contributing Party shall pay, or cause to be paid, all transfer, issuance and other taxes and other costs incurred in connection with the contributions made by it hereunder and the issuance of Class B Common Stock made by the Company pursuant hereto.

**ARTICLE III**  
**SURVIVAL; INDEMNIFICATION**

Section 3.01 Survival; Indemnification.

(a) The covenants, agreements, representations and warranties of the parties contained herein or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive for a period of seven years after the Contribution Date. Notwithstanding the preceding sentence, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Article III shall survive the time at which it would otherwise terminate pursuant to such sentence if notice of the inaccuracy or breach thereof giving rise to such indemnity shall have been given to the party against whom such indemnity may be sought, prior to such time.

(b) Contributing Party and its successors and assigns (each a "*Contributing Party Indemnitor*"), jointly and severally, hereby agree to indemnify each Company Indemnitee against, and agree to hold it harmless from, any and all damage, loss, liability claims, costs and expenses (including, without limitation, reasonable expenses of investigation, consultant and attorneys' fees and expenses) (each, a "*Loss*") incurred or suffered by such Company Indemnitee arising, directly or indirectly, out of:

(i) the breach of any representation or warranty made by Contributing Party contained in this Agreement or any other agreement or document referred to or contemplated herein or therein;

(ii) the breach of any covenant or agreement to be performed by Contributing Party contained in this Agreement or any other agreement or document referred to or contemplated herein or therein;

(iii) any and all Losses suffered or incurred by the Company by reason of or in connection with the ownership and operation of the Contributed Assets by Contributing Party prior to the Contribution Date,

*provided, however*, that no Contributing Party Indemnitor shall be liable to indemnify any Company Indemnitee for any Loss to the extent that such Loss results from any such Company Indemnitee's gross negligence or willful misconduct.



To the extent that Contributing Party's undertaking set forth in this Section 3.01 may be unenforceable because it is violative of any Law or public policy, Contributing Party will contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Losses incurred by the Company Indemnitee.

#### **ARTICLE IV** **DEFINITIONS**

For the purpose of this Agreement, the following terms have the following meanings:

**"Actions"** are defined in Section 2.01(e).

**"Affiliate"** means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such other Person.

**"Agreement"** is defined in the preamble.

**"Certificate of Incorporation"** is defined in the recitals.

**"Class B Common Stock"** is defined in the recitals.

**"Company"** is defined in the preamble.

**"Company Indemnitee"** means the Company, any of its Affiliates, and any Indemnitee Affiliate.

**"Contributed Assets"** is defined in the recitals.

**"Contributing Party"** is defined in the preamble.

**"Contributing Party Indemnitor"** is defined in Section 3.01(b).

**"Contribution Date"** is defined in the preamble.

**"Encumbrances"** means all title defects, objections, Liens, pledges, claims, rights of first refusal, options, charges, security interests, mortgages, easements, rights-of-way, building or use restrictions, exceptions, variances, reservations or other encumbrances of any nature whatsoever.

**"Existing Encumbrances"** is defined in Section 2.02(d).

**"General Mills Marketing"** is defined in the preamble.

**"HDIP Stock"** is defined in the recitals.

**"Indemnitee Affiliate"** means the directors, officers, employees, agents, successors and assigns of each Company Indemnitee.

**"Intellectual Property Rights"** means patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

**"Law"** and **"Laws"** mean all laws (statutory or otherwise), ordinances, rules, regulations, bylaws and codes of all governmental and regulatory authorities, whether federal, state, or local.

**"Liens"** means, with respect to any property, any mortgage, lien, pledge, charge, security interest, right of set-off or similar encumbrance of any kind or any purchase or option agreement or arrangement, or any agreement to create or effect any of the same in respect of such property. For purposes hereof, a Person shall be deemed to own subject to a Lien any property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such property.

**"Loss"** is defined in Section 3.01(b).

**"Material Adverse Effect"** means, with respect to any Person, a material adverse effect on (a) the business, operations, properties or condition (financial or otherwise) of such Person and its Subsidiaries taken as a whole, (b) the legality, validity or enforceability of this Agreement or any agreement or instrument referred to or contemplated herein or therein or the consummation of the transactions contemplated hereby or thereby, (c) the ability of such Person to perform its obligations under this Agreement, or (d) any of the rights or remedies available against such Person under this Agreement.

**"Permitted Encumbrances"** means the Existing Encumbrances and the Required Consents.

**"Person"** means any individual, partnership (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, or other entity.

**"Required Consents"** is defined in Section 2.02(e).

**"TPC"** is defined in the preamble.

**"TPC IP"** is defined in the recitals.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

#### **Section 5.01 Notices.**

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by registered or certified mail

(return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

**If to Contributing Party:**

The Pillsbury Company  
c/o General Mills, Inc.  
Number One General Mills Boulevard  
Minneapolis, Minnesota 55426  
Attention: Elizabeth L. Wittenberg

**If to the Company:**

General Mills Marketing, Inc.  
c/o General Mills, Inc.  
Number One General Mills Boulevard  
Minneapolis, Minnesota 55426  
Attention: Elizabeth L. Wittenberg

**Section 5.02 Binding Effect.**

Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees, and permitted assigns.

**Section 5.03 Assignment.**

Neither this Agreement nor any rights or obligations under this Agreement may be transferred by either party without the prior written consent of the other party; *provided that* either party may transfer all of its rights and obligations hereunder pursuant to a consolidation or amalgamation with, or merger with or into, or a transfer of all or substantially all its assets to, another Person (but without prejudice to any other right or remedy under this Agreement).

**Section 5.04 Construction.**

It is the intent of the parties hereto that every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party.

**Section 5.05 Headings.**

The article and section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

#### Section 5.06 Severability.

If any term, provision, covenant or condition of this Agreement, or the application thereof to any party hereto or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants and conditions of this Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction), will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties hereto as to the subject matter hereof and the deletion of such portion of this Agreement will not substantially impair the respective expectations of the parties hereto or the practical realization of the benefits hereof that would otherwise be conferred upon any party hereto. Each party will endeavor in good faith negotiations with the other party to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

#### Section 5.07 Governing Law.

The Laws of the State of Delaware, without application of the conflicts of Laws principles thereof, shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder.

#### Section 5.08 Consent to Jurisdiction.

Each party hereto (i) irrevocably submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court therefrom, in any action arising out of this Agreement (but subject to the laws of the State of Delaware as set forth in Section 5.07), (ii) agrees that all claims in such action may be decided in such court, (iii) waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum, and (iv) consents, to the fullest extent it may effectively do so, to the service of process by mail in accordance with Section 5.01 hereof. A final judgment in any such action shall be conclusive and may be enforced in other jurisdictions. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by Law or affect its right to bring any action in any other court.

#### Section 5.09 Waiver of Jury Trial.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY AND ALL RIGHTS TO IMMUNITY BY SOVEREIGNTY OR OTHERWISE IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

#### Section 5.10 Counterpart Execution.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

#### Section 5.11 Specific Performance.

Each of the parties acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement and that irreparable harm would result if this Agreement were not specifically enforced. Therefore, the rights and obligations of the parties under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. A party's right to specific performance shall be in addition to all other legal or equitable remedies available to such party.

#### Section 5.12 No Material Impairment.

No party hereto shall take any action that could impair materially such party's ability to perform its duties and obligations under this Agreement.

#### Section 5.13 Entire Agreement.

This Agreement including the schedules, other documents and instruments referred to herein constitute the entire agreement between the parties hereto and contain all of the agreements between such parties with respect to the subject matter hereof and thereof. This Agreement supersedes any and all other agreements, either oral or written, between such parties with respect to the subject matter hereof.

#### Section 5.14 No Third Party Beneficiaries.

Except as otherwise provided herein, no Person other than a party hereto shall have any rights or remedies under this Agreement.

#### Section 5.15 Waiver of Compliance; Consents.

Any failure of a party to comply with any obligation, covenant, agreement or condition herein may be waived by the other party; *provided, however*, that any such waiver may be made only by a written instrument signed by the party granting such waiver; and *provided, further*, that such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 5.15, with appropriate notice in accordance with Section 5.01 hereof.

Section 5.16 Amendment and Modification.

This Agreement may be amended, modified or supplemented only by written agreement of all the parties hereto.

Section 5.17 Schedules.

All Schedules attached hereto are hereby incorporated herein and made a part hereof as if set forth in full herein.

Section 5.18 Expenses, Etc.

Whether or not the transactions contemplated by this Agreement shall be consummated, all fees and expenses (including all fees of counsel, actuaries and accountants) incurred by any party in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby shall be borne by such party.

Section 5.19 Further Assurances.

From time to time, at the request of any Contributing Party or the Company and without further consideration, each party, at its own expense, will execute and deliver such other documents, and take such other action, as any Contributing Party or the Company reasonably may request in order to consummate more effectively the transactions contemplated hereby. In the event any of the TPC IP contributed to the Company pursuant to this Agreement should not have been transferred or included on Schedule 2.02(a), the Company and Contributing Party will cooperate and take all necessary or appropriate actions to remedy any inaccuracy with respect to the proper owner of such TPC IP.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**THE PILLSBURY COMPANY**

KLK

By: 

Name: James A. Lawrence

Title: President

**GENERAL MILLS MARKETING, INC.**

KLK

By: 

Name: Ian R. Friendly

Title: President