

## **Health Care Professional Reseller Agreement (Private Label Products)**

This Agreement is made as of \_\_\_\_\_, 2019 between FoodScience Corporation, a Vermont corporation (“FSC”), and \_\_\_\_\_, a \_\_\_\_\_ (“Reseller”).

**Background.** FSC is a producer and seller of nutraceutical products sold under the brand name DaVinci Laboratories of Vermont. FSC also sells nutraceutical products through a private label program under which products are marketed and sold under the customer’s brand names and identity (the “PL Products”). Reseller is a health care professional that wishes to purchase and resell PL Products to its patients or clients. FSC agrees to sell, and Reseller agrees to buy, PL Products on the terms set forth in this Agreement.

**Agreement.** The parties, intending to be bound, agree as follows.

1. Purchase Orders. From time to time, Reseller shall issue purchase orders specifying the PL Products ordered. FSC may accept such orders either by issuing an order confirmation or by shipping PL Products conforming to the order and this Agreement. If FSC accepts a purchase order, it will invoice Reseller upon shipment. Reseller agrees to pay for the PL Products within 30 days following the date of invoice, and any invoice not paid within such time period shall accrue interest at the rate of 1.5% per annum until paid. The terms set forth in this Agreement supersede any inconsistent terms in Reseller’s form of purchase order.

2. Resale of PL Products. Reseller agrees as follows:

- a. It will sell or provide PL Products only to end users of the PL Products who are under such Reseller’s care.
- b. It will not sell any PL Products after any expiration date on the PL Products’ label or otherwise provided by FSC to Reseller.
- c. It not sell any PL Products that have been tampered with or are otherwise damaged.
- d. It will sell PL Products only in the United States.
- e. It will not make false or misleading statements about PL Products.

3. Use of FSC Brands. PL Products are intended to create brand recognition for the Reseller without using or making reference to any of FSC’s brands or creating any association with FSC. Therefore, Reseller agrees as follows:

- a. Reseller shall not refer to PL Products as being FSC products, being comparable to FSC Products or being produced using FSC’s formulas.

Reseller shall not represent that the PL Products are associated with FSC, including using phrasing such as “By FSC (or an FSC brand)” or “Compare to FSC (or an FSC brand).”

b. Reseller shall not use FSC’s name, trademarks, imagery, brand names or product identification codes in the course of advertising and selling the PL Products, including through use of UPCs, Amazon ASINs, or other search engine optimization strategy tools.

c. Reseller shall not purchase as keywords or adwords FSC’s corporate name or any of FSC’s trademarks, brand names or product names.

d. Reseller shall not refer to FSC or any FSC product in any product reviews or in responses to customer comments or Q&A dialogue.

e. Reseller is permitted to sell FSC Products to end users using its own website or by utilizing ecommerce marketplaces such as Amazon and Jet; provided, however, that if the Reseller uses any ecommerce marketplace, it must notify FSC of the names of any “store” or identifier that the Reseller is using to sell the Products.

4. Warranties; Limitation of Damages. FSC expressly warrants that (i) all PL Products sold under this Agreement shall be manufactured in accordance with cGMP regulatory requirements applicable in the United States; (ii) the PL Products are not adulterated; (iii) the PL Products contain the ingredients in the amounts that have been specified on the label; and (iv) the PL Products will be fit for consumption prior to the expiration date set forth on the Product packaging. FSC shall indemnify the Reseller against all actions, proceedings, claims, demands, suits, damages, or expenses that result from breach of any of the foregoing warranties. FSC DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO COURSE OF DEALING, PROMOTIONAL MATERIALS OR PRODUCT DESCRIPTION SHALL BE DEEMED A WARRANTY OF ANY PRODUCTS. FSC MAKES NO INDEMNITY, REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT, EXCEPT FOR THE WARRANTIES AND INDEMNITIES SET FORTH IN THIS PARAGRAPH. FSC IS NOT LIABLE TO RESELLER OR ANY THIRD PARTY FOR PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE RELATIONSHIP BETWEEN FSC AND THE RESELLER EVEN IF FSC HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

5. Governing Law; Venue. The rights and obligations of the parties under this Agreement shall be construed and enforced in accordance with the laws of the State of Vermont, without giving effect to principles of conflict of laws. Each party (a) submits to the jurisdiction of any state or federal court sitting in the State of Vermont in any action or proceeding arising out of or relating to this Agreement, (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) waives any claim of inconvenient

Agreement, the substantially prevailing party in such litigation shall be entitled to recover, in addition to all other provable damages, all attorney fees and expenses incurred in such litigation.

6. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any preexisting written or oral agreements between the parties with respect to the subject matter of this Agreement are expressly canceled and are superseded by this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed in counterparts by the parties hereto as of the date first written above.

FoodScience Corporation

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

Name: Tammy Johnson

Title: Director of Sales and Marketing

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

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

Store Names: \_\_\_\_\_

Practice Name: \_\_\_\_\_

Doctor's Name: \_\_\_\_\_

Practice Phone Number: \_\_\_\_\_

This MAP policy is effective June 18, 2018.

**Contact Information.**

FSC SALES PERSONNEL HAVE NO AUTHORITY TO MODIFY OR GRANT EXCEPTIONS TO THIS POLICY OR HAVE ANY COMMUNICATIONS WITH ANY RESELLER REGARDING VIOLATIONS OF THIS MAP POLICY.

All questions or comments regarding this MAP policy are to be directed to the policy administrator at [dvpolicycomm@foodsciencecorp.com](mailto:dvpolicycomm@foodsciencecorp.com) / (802) 872-1972. The policy administrator shall be solely responsible for determining whether a violation of the policy has occurred, communicating decisions to resellers regarding the policy and receiving any communication regarding sanctions