

## PRODUCT RESELLER AGREEMENT

This Product Reseller Agreement (the “**Agreement**”), effective as of the last date set forth on the signature page to this Agreement, is entered into by and between Neurobiologix, LLC., a Texas corporation having its principal place of business at 13376 N. Highway 183, Ste 126, Austin, TX 78750. (“**Supplier**”), and the following company (known hereafter as “**Reseller**”):

**Reseller’s Legal Name:**

**Reseller’s Address:**

Supplier and Reseller may be collectively referred to as the “**Parties**”, or may be each singularly referred to as a “**Party**”).

**Whereas**, Supplier is in the business of manufacturing and selling the nutritional products and supplements (“**Products**”);

**Whereas**, Reseller is a licensed health care provider OR licensed nutrition company which is also in the business of marketing and reselling products that are similar in kind and quality to the Products;

**Whereas**, Reseller wishes to purchase the Products from Supplier and resell these Products to End Users (as defined below), subject to the terms and conditions of this Agreement; and

**Whereas**, Supplier wishes to sell the Products to Reseller and appoint Reseller as a non-exclusive reseller under the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**

“**Effective Date**” means the last date set forth on the signature page to this Agreement.

“**End User**” means the final purchaser that (a) has acquired a Product from Reseller for its own internal use and not for resale, remarketing or distribution.

“**Intellectual Property Rights**” means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all rights, interests and protections that are associated with, equivalent or similar to.

“**Law**” means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.

“**Notice**” has the meaning set out in Section 12.3. “**Notify**” means to give Notice.

“**Products**” means those items produced by Supplier and selected for purchase by Reseller.

“**Representatives**” means a Party’s affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors and permitted assigns.

“**Supplier’s Intellectual Property Rights**” means all Intellectual Property Rights owned by or licensed to Supplier.

“**Term**” has the meaning set out in Section 7 of this Agreement.

“**Trademarks**” means all rights in and to US and foreign trademarks, service marks, trade

names, brand names, logos, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights and all similar or equivalent rights or forms of protection in any part of the world.

“**Trade Secrets**” means all inventions, discoveries, trade secrets, business and technical information know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.

## 2. **Appointment as a Reseller**

2.1 **Non-Exclusive Appointment** Supplier hereby appoints Reseller, and Reseller accepts the appointment, to act as a non-exclusive reseller of Products to End Users during the Term of this Agreement, solely in accordance with the terms and conditions of this Agreement. Supplier may, in its sole discretion, sell the Products to any other Person or entity.

2.2 **Status as an Independent Contractor.** The relationship between Supplier and Reseller is solely that of vendor and vendee. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment or fiduciary relationship between the Parties or an employee/employer relationship.

Reseller is an independent contractor under this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

2.3 **Right to Sell Competitive Products.** This Agreement does not preclude either Party from entering into an agreement with any other third party (a “Competitive Transaction”) related to the sale or distribution of other goods or products that are similar to or competitive with the Products.

## 3. **No Franchise or Business Opportunity Agreement**

3.1 **No Franchise or Business Opportunity Agreement.** The Parties acknowledge and agree that this Agreement is not a franchise or business opportunity agreement and does not create a franchise or business opportunity relationship between the Parties. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the Parties, then Supplier shall have the sole discretion to immediately terminate this Agreement.

## 4. **Terms of Agreement Prevail Over Terms of Purchase Orders**

4.1 **Terms of Agreement Prevail Over Reseller’s Purchase Order.** This Agreement is expressly limited to the terms of this Agreement and any Purchase Order Transaction Terms contained in the applicable Purchase Order. The terms of this Agreement shall prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement, and expressly exclude any of Reseller’s general terms and conditions contained in any Purchase Order or other document issued by Reseller.

## 5. **General Reseller Performance Obligations**

5.1 **Marketing and Reselling Products.** Reseller shall, in good faith and at its own expense:

5.1.1 Know and abide by all regulations of the specific jurisdiction(s) in which Reseller sells the Products, including all laws and regulations pertaining to dietary supplement labeling (GMO, California Prop. 65, Age-restrictions, etc.), marketing, and regulations specific to individual ingredients for each product.

5.1.2 Observe all directions and instructions given to it by Supplier in relation to the marketing, advertisement and promotion of the Products, including Supplier’s sales, marketing, and merchandising policies as they currently exist or as they may hereafter

be changed by Supplier, to the extent that these marketing materials, advertisements, or promotions refer to the Products or otherwise use Supplier's Trademarks.

- 5.1.3 In any and all contact between Reseller and any End User, Reseller must identify to the End User Reseller's full legal name, trade name, or both.
- 5.1.4 Market, advertise, promote, and resell Products and conduct business in a manner that reflects favorably at all times on Products and the good name, goodwill, and reputation of Supplier.
- 5.1.5 Promptly Notify Supplier of (and address and investigate, if appropriate) any complaint or adverse claim about any Product or its use of which Reseller becomes aware; provided that nothing in this Agreement requires Reseller to reveal proprietary pricing information.
- 5.1.6 Upon reasonable request by Supplier, provide Supplier with a current and accurate list of all of its selling locations or outlets.
- 5.2 **Reporting and Recordkeeping.** Reseller shall, in good faith and at its own expense:
  - 5.2.1 Within thirty (30) days after the reasonable request of Supplier, submit to Supplier complete and accurate reports of inventory and sales of the Products in a computer-readable format acceptable to Supplier.
  - 5.2.2 Maintain books, records, and accounts of all transactions and activities covered by this Agreement and permit review thereof by Supplier and its Representatives, upon reasonable request.
  - 5.2.3 Provide Supplier with copies of Reseller's current and unrestricted license(s) OR business license.

**Authority to Perform Under this Agreement.** Reseller shall, at its own expense, obtain and maintain required certifications, credentials, licenses, and permits necessary to conduct business.

5.4 **Government Approval.** If at any time during the Term any notification, registration or approval is required to give legal effect, in any applicable jurisdiction, to this Agreement or the transactions contemplated by this Agreement, Reseller shall:

- 5.4.1 Immediately take whatever steps may be necessary to properly notify, register, or obtain appropriate approval.
- 5.4.2 Be responsible for any charges incurred in connection with notifying, registering, or obtaining such approval(s).
- 5.4.3 Keep Supplier informed of its efforts regarding this Section.

5.5 **Prohibited Acts.** Notwithstanding anything to the contrary in this Agreement, neither Reseller nor Reseller's Representatives shall:

- 5.5.1 Make any representations, warranties, guarantees, indemnities, similar claims, or other commitments actually, apparently, or ostensibly on behalf of Supplier, or to any End User regarding the Products, which representations, warranties, guarantees, indemnities, similar claims or other commitments are addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Supplier to Reseller.
- 5.5.2 Engage in any unfair, competitive, misleading, or deceptive practices regarding Supplier, Supplier's Trademarks, or the Products, including any product disparagement or "bait- and-switch" practices.
- 5.5.3 Sell, either directly or indirectly, or assign or transfer in any way, any Products to any person (or entity) when Reseller knows or has reason to suspect that the person (or entity) may resell any or all of the Products to a third party, including any third party reseller or distributor such as Amazon, Ebay, Jet, etc... without the consent of Supplier.
- 5.5.4 Sell Products to any person in quantities or unit volumes which are inappropriate for individual use.
- 5.5.5 Sell Products via any third-party-facilitated online retail or online auction website (including, but not limited to: Amazon, Jet, eBay, NexTag.com, PriceGrabber.com, Shopzilla.com, Best-Price.com, or any other online retail or online auction websites which sell products similar in

character to Products). **Supplier and Reseller acknowledge and agree that this prohibition is necessary to ensure patient/consumer safety and the integrity of the Products (Per Our Approval Per Product for other third party websites),**. Notwithstanding the foregoing, Reseller shall be permitted to sell individual unit-volumes of its Products on its own direct website.

5.5.6 Make any reference or inference to discounts, price reductions, special call-in-pricing, coupons, price-matching policies, or any other special promotions of Supplier when engaging in any marketing activity regarding or sale of Products.

5.5.7 Make any claims regarding the use of Products which do not appear on the label of Products or Supplier's online Product listing; i.e., Reseller shall not make claims that Products treat specific diseases or conditions ("Disease Claims") and shall use only supportive statements that appear on the label of Products or in Supplier's online Product listing. At any time, Supplier may require the Reseller to make changes to Reseller's direct website or printed information about the Products if the Reseller advertises or markets the Products in any way which Supplier reasonably believes violates applicable regulations promulgated by the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC).

5.6 **Supplier's Right to Discontinue Sales.** Supplier reserves the right to discontinue sales of the Product to Reseller in the event Reseller engages in any Prohibited Acts enumerated at Section 5.5.

## 6. **Minimum Advertised Price**

**Reseller Agreement / Minimum Advertised Price.** Reseller agrees to abide by Supplier's "Minimum Advertised Price Policy," which applies to all authorized resellers of Products. Accordingly, Reseller agrees not to advertise through any medium

6.1 of mass communication that any Product will be sold at less than the suggested retail price for each respective Product as listed on Supplier's then-current Product Price List. Reseller further agrees not to sell any Product at a volume discount or through any sales promotion that would cause the per sale unit price to drop below the suggested retail price for any respective Product as listed on Supplier's then-current Product Price List. This Agreement does not establish an actual retail price for the Products; Reseller is in no way prohibited from selling Products at higher prices than the prices listed on Supplier's then-current Price List.

## 7. **Term**

7.1 **Initial Term.** The Term of this Agreement commences on the Effective Date and continues indefinitely, unless or until terminated as provided under this Agreement (the "Initial Term").

7.2 **Supplier's Right to Terminate.** Supplier may terminate this Agreement by providing written notice to Reseller:

7.2.1 If Reseller fails to pay any amount when due under this Agreement ("**Payment Failure**") and the failure continues for ninety (90) days after Reseller's receipt of any invoice which states Reseller's obligation to pay such amount;

7.2.2 If within any period of two (2) months, two (2) or more Payment Failures occur;

7.2.3 If Reseller breaches any provision of this Agreement (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Reseller within ten (10) days after Reseller's receipt of written Notice of the breach;

7.2.4 If Reseller is dissolved or liquidated or takes any corporate action for such purpose, becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally

unable to pay its debts as they become due;

Any termination under this Section 7.2 shall be effective on Reseller's receipt of Supplier's written Notice of termination or any later date set out in the Notice.

**7.3 Effect of Termination.** The termination of the Term does not affect any rights or obligations that were incurred by the Parties prior to the termination. Upon termination, all indebtedness of Reseller to Supplier of any kind is immediately due and payable on the effective date of the Term's termination without further Notice to

Reseller. Any Notice of termination under this Agreement automatically operates as a cancellation of any

deliveries of Products to Reseller scheduled to be made after the effective date of termination, whether or not any orders for the Products had been accepted by Supplier. Regarding any Products that are still in transit on termination of this Agreement, Supplier may require, in its sole discretion, that all sales and deliveries of the

Products be made on either a cash-only or certified check basis. Upon expiration or earlier termination of the

Term, Reseller shall cease to represent itself as Supplier's authorized reseller regarding the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe Reseller is authorized by Supplier to sell the Products.

## **8. Confidentiality**

**8.1 Protection of Confidential Information.** From time to time during the Term, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, goods and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or

media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure:

8.1.1 Is or becomes generally available to and known by the public other than resulting from, directly or indirectly, any breach of this Section by the Receiving Party or any of its Representatives;

8.1.2 Is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that the third party is not and was not prohibited from disclosing the Confidential Information;

8.1.3 Was known by or in the possession of the Receiving Party or its Representatives before being disclosed by or on behalf of the Disclosing Party;

8.1.4 Was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or

8.1.5 Must be disclosed under applicable Law.

**8.2 Obligations of Receiving Party.** The Receiving Party shall:

8.2.1 Protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information.

8.2.2 Not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

8.2.3 Not disclose any Confidential Information to any Person, except to the Receiving Party's Representatives who must know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

8.2.4 Bear responsibility for any breach of this Section 8 caused by any of its Representatives.

8.2.5 Promptly return or destroy all Confidential Information (including copies) and all documents and tangible materials that contain, reflect, incorporate or are based on

Confidential Information received under this Agreement, upon request of the Disclosing Party.

9. **Intellectual Property Rights**

9.1 **Ownership.** Subject to the express rights granted by Supplier in this Agreement, Reseller acknowledges and agrees that:

- 9.1.1 Supplier's Intellectual Property Rights are the sole and exclusive property of Supplier or its licensors;
- 9.1.2 Reseller shall not acquire any ownership interest in any of Supplier's Intellectual Property Rights under this Agreement;
- 9.1.3 Any goodwill derived from the use by Reseller of Supplier's Intellectual Property Rights inures to the benefit of Supplier or its licensors, as the case may be;
- 9.1.4 If Reseller acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Supplier or its licensors, as the case may be, without further action by either Party; and
- 9.1.5 Reseller shall use Supplier's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Supplier.

9.2 **Supplier's Trademark License Grant.** This Agreement does not grant either Party the right to use the other Party's or their affiliates' Trademarks except as set out under this Section. Subject to Supplier's trademark policies, Supplier hereby grants to Reseller a non-exclusive, non-transferable and non-sublicensable license to use Supplier's Trademarks during the Term solely on or in connection with the promotion, advertising and resale of the Products in accordance with the terms and conditions of this Agreement. Reseller will promptly

discontinue the display or use of any Trademark to change the manner in which a Trademark is displayed or used with regard to the Products when requested by Supplier. Other than the express licenses granted by this

Agreement, Supplier grants no right or license to Reseller, by implication, estoppel or otherwise, to the Products or any Intellectual Property Rights of Supplier. Reseller agrees to use the symbols TM and ©, as appropriate,

when displaying Supplier's Trademarks, to indicate Supplier's ownership of the Trademarks; use of such

symbols shall not be construed as claims to ownership by the Reseller. Reseller's use of Supplier's Trademarks must be accompanied by a statement substantially as follows: "All Neurobiologix Names and Logos are trademarks of Neurobiologix, Inc., and are used with permission." Reseller's website must also include, on all pages that reflect Products, a statement substantially as follows: "This site is not owned or operated by Neurobiologix."

9.3 **Prohibited Acts.** Reseller shall not:

- 9.3.1 Take any action that interferes with any of Supplier's rights in or to Supplier's Intellectual Property Rights, including Supplier's ownership or exercise thereof;
- 9.3.2 Challenge any right, title or interest of Supplier in or to Supplier's Intellectual Property Rights;
- 9.3.3 Make any claim or take any action adverse to Supplier's ownership of Supplier's Intellectual Property Rights;
- 9.3.4 Register or apply for registrations, anywhere in the world, for Supplier's Trademarks or any other Trademark that is similar to any of Supplier's Trademarks or that incorporates Supplier's Trademarks in whole or in confusingly similar part;
- 9.3.5 Use any mark, anywhere, that is confusingly similar to Supplier's Trademarks;
- 9.3.6 Engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Supplier Trademark;

- 9.3.7 Misappropriate any of Supplier's Trademarks for use as a domain name without prior written consent from Supplier; and
- 9.3.8 Alter, obscure or remove any of Supplier's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on Products or any marketing materials.

1.1 **Supplier's Trademark Notices.** Reseller shall ensure that all Products sold by Reseller and all related quotations, specifications and descriptive literature, and all other materials carrying Supplier's Trademark, are marked with the appropriate trademark notices in accordance with Supplier's instructions.

1.2 **No Continuing Rights.** On expiration or earlier termination of this Agreement:

1.2.1 Reseller's rights under Section 9.2 cease immediately; and

1.2.2 Reseller shall immediately cease all display, advertising, promotion and use of all of Supplier's Trademarks and shall not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with Supplier's Trademarks or with any trademark, trade name or product designation associated with Supplier or any Product.

## 2. **Price and Payment**

2.1 **Price.** Reseller shall purchase the Products from Supplier at the prices set out in Supplier's reseller price list in effect when the Supplier accepts the related Purchase Order ("**Prices**").

2.2 **Shipping Charges, Insurance and Taxes.** Reseller shall pay for shipping charges and shipping insurance costs for the Products. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by

Reseller under this Agreement. Reseller is responsible for all charges, costs and taxes; provided, however, that, Reseller is not responsible for any taxes imposed on, or regarding, Supplier's income, revenues, gross receipts, Personnel or real or personal property or other assets.

2.3 **Payment Terms.** Supplier shall issue invoices to Reseller for all Products ordered. Reseller shall pay all invoiced amounts due to Supplier on receipt, as indicated on each invoice, except for any amounts disputed by Reseller in good faith and in accordance with Section 10.4. Reseller shall make all payments in US dollars, by check or wire transfer; wire transfer instructions will be provided by Supplier to Reseller upon request.

2.4 **Invoice Disputes.** Reseller shall Notify Supplier in writing of any dispute with any invoice (along with substantiating documentation or a reasonably detailed dispute description) within seven (7) Business Days from

the date of the invoice. Reseller will be deemed to have accepted all invoices for which Supplier does not receive timely Notice of disputes, and shall pay all undisputed amounts due under these invoices within the period set

out above. The Parties shall seek to resolve all disputes expeditiously and in good faith.

Notwithstanding

anything to the contrary, Reseller shall continue performing its obligations under this Agreement during any dispute, including, without limitation, Reseller's obligation to pay all due and undisputed invoice amounts in accordance with the terms and conditions of this Agreement.

2.5 **No Set-off Right.** Reseller shall not, and acknowledges that it has no right, under this Agreement, any

Purchase Order, any other agreement, document or Law, to, withhold, offset, recoup or debit any amounts owed (or become due and owing) to Supplier or any of its affiliates, whether under this Agreement or otherwise,

against any other amount owed or to become due and owing to it by Supplier or Supplier's affiliates, whether relating to Supplier's or its affiliates' breach or non-performance of this Agreement, any Purchase Order, or any other agreement between Reseller or any of its affiliates.

## 3. **Indemnification.**

3.1 **Reseller Indemnification.** Reseller shall indemnify, hold harmless, and defend Supplier and

its parent, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors and permitted assigns (collectively, “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys’ fees, fees or fines, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, “**Losses**”), incurred by Indemnified Party and arising out of or relating to any Claim of a third party:

3.1.1 Relating to any failure by Reseller or its Personnel to comply with any applicable Laws.

3.1.2 **Indemnification of Neurobiologix by Customer.** Customer agrees to indemnify, defend and hold Neurobiologix harmless from any and all threatened or pending claims, losses, demands, suits, costs (including reasonable attorneys’ fees), causes of action or proceedings of whatsoever kind or character (“**Claims**”) arising out of a breach of Customer’s obligations set forth herein, including, without limitation, the failure to affix Warning Labels to Products that do not meet the Prop 65 Guidelines of California which Customer knowingly or unknowingly, indirectly or directly sells or distributes into California. You may obtain the list of products that do not meet the Prop 65 Guidelines of California emailing [info@neurobiologix.com](mailto:info@neurobiologix.com)



**PRODUCT RESELLER AGREEMENT**

*Signature Page*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**Neurobiologix, LLC.**

X \_\_\_\_\_

Printed Name / Title: Kara Stewart/Chief Executive Officer

Customer

Name:

Customer

ID #

X \_\_\_\_\_ Dated: \_\_\_\_\_

Printed Name / Title: \_\_\_\_\_

\_\_\_\_\_