



Marco Pharma International, LLC

CUSTOMER PROTECTION AGREEMENT

THIS **MARCO PHARMA INTERNATIONAL CUSTOMER PROTECTION AGREEMENT** (the "Agreement") is made as of this _____ day of _____, _____ (the "Effective Date"), by and between **MARCO PHARMA INTERNATIONAL, LLC**, ("**MARCO PHARMA**"), an Oregon Limited Liability Company, with its principal place of business located at 851 N.W. Highland Street, Roseburg, OR 97470, and the health care professional, _____ ("**CUSTOMER**"), with its principal place of business located at _____. In consideration of the mutual promises and covenants herein, **MARCO PHARMA** and **CUSTOMER** (the "Parties") do hereby agree as follows:

WHEREAS, MARCO PHARMA is a producer and wholesale purchaser of nutraceutical and natural health products which are marketed worldwide under the **MARCO PHARMA** product line and brand name (the "Products"), and the Products do or may require special distribution services through a licensed health care professional; and

WHEREAS, CUSTOMER wishes to purchase from **MARCO PHARMA**, and **MARCO PHARMA** wishes to supply to **CUSTOMER**, the Products for the benefit of **CUSTOMER's** health care practice, patients, or clients; and

NOW, THEREFORE, in consideration of the above recitals, the terms and conditions hereinafter set forth, and other good and valuable consideration, the **Parties** agree as follows:

STANDARD TERMS AND CONDITIONS

1. PURCHASE AND SUPPLY.

This Agreement shall serve as the master contract governing **CUSTOMER's** establishment of an account with **MARCO PHARMA** for the purpose of placing orders to purchase Products ("Account"). Subject to the terms and conditions of this Agreement, **MARCO PHARMA** will sell to **CUSTOMER**, and **CUSTOMER** shall purchase from **MARCO PHARMA**, the Products in such quantities and at such times as specified in the "Purchase Orders" submitted by **CUSTOMER** pursuant to this Agreement during the Term (defined below). **CUSTOMER** represents, warrants, and therefore agrees that **CUSTOMER** will only sell or provide **MARCO PHARMA** products to end users, and will not supply **MARCO PHARMA** Products to distributors or resellers. Additionally, **CUSTOMER** agrees to dispense Products only to patients consulting with a licensed health care practitioner. This Agreement does not obligate **CUSTOMER** to order any Product, nor does it obligate **MARCO PHARMA** to provide all of **CUSTOMER's** order requirements. **MARCO PHARMA** shall not be obligated to fulfill a Purchase Order unless and until it accepts that Purchase Order. All orders are subject to **MARCO PHARMA's** right of repurchase in the case of **CUSTOMER's** breach of this Agreement.

2. AUTHORIZED USERS. **CUSTOMER** and

your Authorized Users (defined below) are granted a right to use the Account. Only **CUSTOMER's** owners and employees specifically designed by **CUSTOMER** in writing and approved by **MARCO PHARMA** are eligible to access and use the Account ("Eligible Persons"). All Eligible Persons are required to undergo a **MARCO PHARMA** screening process. The term "Authorized User" means an Eligible Person who **MARCO PHARMA** approves in writing. **CUSTOMER** agrees that only Authorized Users shall place orders on **CUSTOMER's** Account. **CUSTOMER** shall not share their Account or permit its use by any other person who is not an Authorized User. **CUSTOMER** will manage its roster of Authorized Users and will promptly notify **MARCO PHARMA** to deactivate an Authorized User's ordering privileges immediately if the Authorized User is no longer an Eligible Person or you otherwise wish to terminate the Authorized User's ordering privileges. **CUSTOMER** is responsible for all orders place on the Account, whether by

Authorized Users or others. **CUSTOMER** will use reasonable commercial efforts to prevent unauthorized use of the Account and will promptly notify **MARCO PHARMA**, in writing, if you suspect that your Account has been compromised, or misused, and will assist **MARCO PHARMA** in taking corrective actions deemed appropriate in **MARCO PHARMA's** sole and exclusive discretion, up to and including seeking criminal sanctions.

3. Term; Termination.

Unless sooner terminated as provided herein, this Agreement shall commence on the Effective Date and continue in full force and effect for a period of one (1) year ("Term"). This Agreement shall automatically renew unless written notice is provided by either party at least 30 days prior to the anniversary of the Effective Date. All renewals shall be under the "Standard Terms and Conditions" posted on **MARCO PHARMA's** website (www.marco-pharma.com) and in effect as of the renewal date. **MARCO PHARMA** may terminate this Agreement immediately upon **CUSTOMER's** breach of this Agreement, or upon **CUSTOMER's** failure to maintain the qualifications provided in Section 3 below. **MARCO PHARMA** shall provide **CUSTOMER** written notice of termination and termination shall be effective as of the date of the notice of termination. Either Party may terminate without cause upon 30 days prior written notice. If this Agreement is terminated by **MARCO PHARMA** due to **CUSTOMER's** breach, at **MARCO PHARMA's** election, **CUSTOMER** may be required to return, at **CUSTOMER's** sole expense, all Product on hand to **MARCO PHARMA** within fourteen (14) days of notice of termination for repurchase. The repurchase price paid by **MARCO PHARMA** shall be the original price less a 15% restocking fee. **MARCO PHARMA** shall inform **CUSTOMER** in its notice of termination of its election to repurchase any Product and shall pay for the repurchase within 30 days of receipt of the Product.

4. CUSTOMER'S QUALIFICATIONS.

At all times during this Agreement, **CUSTOMER** shall be qualified and be licensed as a health care professional in the state(s) in which they practice and be certified or

eligible in his specialty and subspecialty. As a health care professional, **CUSTOMER** agrees to administer service, care and the Products strictly in accordance with all applicable laws and regulatory requirements, and in accordance with the applicable medical standard of care.

5. NO RESELLS; NO INTERNET SALES.

As valuable consideration for **MARCO PHARMA's** agreement to supply the Products, **CUSTOMER ACKNOWLEDGES AND UNEQUIVOCALLY AGREES THAT IT SHALL NOT RESELL, SELL, MAKE ANY REFERENCE TO PRICES/PRICING, OR DISTRIBUTE ANY OF THE PRODUCTS USING THE INTERNET, ANY INTERNET SITE, OR ANY OTHER ELECTRONIC MEDIUM OR DEVICE, NOT SPECIFICALLY APPROVED BY MARCO PHARMA IN WRITING IN ADVANCE.** For purposes of this Agreement, the term "Internet Site" shall include, but is not limited to, any World Wide Web site, USENET, newsgroup, bulletin board, server, or other online service at any electronic domain name, address, or location, or any other form of online service, electronic domain name, or other form of electronic commerce whatsoever. **CUSTOMER SHALL NOT LIST OR POST ANY PRODUCT PRICES ON THE INTERNET.** **CUSTOMER** also agrees that it shall not publicly advertise the Products using the internet (i.e., banner or other advertisements), any other electronic medium, or any print medium. Any failure to comply with the aforementioned items regarding this policy is a material breach of this Agreement, and will result in termination of this Agreement and the immediate termination of **CUSTOMER's** right to purchase any Products, and shall further entitle **MARCO PHARMA** to pursue any and all other remedies provided herein or available by law.

6. PHARMACY OR RETAIL SALES.

Licensed pharmacists or healthcare professionals may be eligible to purchase **MARCO PHARMA** formulas/Products so long as formulas/Products are not sold on the Internet nor is there any reference to prices/pricing on the internet. **MARCO PHARMA PRODUCTS IN PHARMACIES OR RETAIL STORES MUST BE PLACED BEHIND THE COUNTER, OUT OF SIGHT OF ITS CUSTOMERS, AND REQUIRES CUSTOMER CONSULTATION.** Customer shall not erect or otherwise present **MARCO PHARMA** Products in store or window displays visible or accessible to the public.

7. NON-DISCLOSURE AND CONFIDENTIALITY.

The Parties acknowledge that during the course of their association, **CUSTOMER** will be exposed to "Confidential Information." "Confidential Information" includes, without limitation, all information relating to **MARCO PHARMA's** or its affiliates' business, whether disclosed before, on or after the Effective Date, regardless of the medium on which the information is stored, recorded, conveyed or communicated, and whether or not specifically identified as "Confidential" or "Proprietary," including but not limited to: documents and information the Party considers to be confidential, proprietary, information and that is not readily available to the public that relates to past, present and future financial condition, the markets for their Products, key personnel, trade secrets, current and prospective customer lists, marketing, sales, suppliers, contracts, pricing, inventions, operational methods, acquisition plans, prospects, plans for future development and other

business affairs and information, and summaries, excerpts, compilations and notes prepared by **CUSTOMER** or others related to any of the preceding information.

7.1 Permitted Uses; Restrictions. **CUSTOMER** will not use any Confidential Information for any purpose other than (a) to evaluate and discuss possible business relationships between the Parties and (b) to perform its obligations under any agreement between the Parties.

(a) **CUSTOMER** will hold all Confidential Information in strict confidence and will not disclose, without **MARCO PHARMA's** prior written consent, any Confidential Information to any person other than to Independent **CUSTOMER's** employees who (a) have a "need to know"; (b) have been advised of the confidential and proprietary nature of the Confidential Information; and (c) are bound by confidentiality and non-use obligations that are at least as restrictive as those described in this Agreement. **CUSTOMER** will be responsible for any use or disclosure of Confidential Information by its employees that is not permitted pursuant to this Section.

(b) **CUSTOMER** will protect all Confidential Information by using the same degree of care regarding the Confidential Information that **CUSTOMER** would exercise regarding its own confidential information, but not less than a reasonable standard of care.

(c) **CUSTOMER** will not, without **MARCO PHARMA's** prior written consent, copy documents containing Confidential Information or disassemble, reverse engineer or replicate in any way Products embodying Confidential Information.

7.2 Exceptions. The obligations described in this Section 6 will not apply to any Confidential Information that **CUSTOMER** can document:

(a) Was disclosed or became generally available to the public without breach of this Agreement and through no act or omission of **CUSTOMER** or its representatives;

(b) **CUSTOMER** independently developed and recorded in writing (i) without reference to the Confidential Information and (ii) before the date **CUSTOMER** received the Confidential Information;

(c) **CUSTOMER** received, before **MARCO PHARMA** disclosed it to Independent **CUSTOMER**, from a third Party that did not violate any agreement, duty or applicable law in disclosing the information to Independent **CUSTOMER**; or

(d) Is legally required to be disclosed, subject to Section 6.3 below.

7.3 Orders to Disclose. If **CUSTOMER** becomes subject to an order that requires **CUSTOMER** to disclose Confidential Information, **CUSTOMER** will, to the extent permitted by law: (a) promptly notify **MARCO PHARMA** of the order's terms and the circumstances surrounding its issuance; (b) consult in good faith with **MARCO PHARMA** regarding possible responses to the order and, if requested by **MARCO PHARMA**, make best efforts to narrow the order's scope, obtain a protective order from the court, or produce documents to the court or government body under seal with appropriate instructions regarding preservation of the information's confidentiality; and (c) if disclosure is required to prevent **CUSTOMER** from being subjected to contempt sanctions or other penalties, disclose only the Confidential Information that, in the opinion of counsel reasonably satisfactory to **MARCO PHARMA**, is legally

required to be disclosed, consistent with a reasonable interpretation of the order.

7.4 *Return of Property.* Within five (5) business days after **MARCO PHARMA**'s request, **CUSTOMER** will return to **MARCO PHARMA**, or destroy and certify the destruction of, all copies of documents and any other tangible material embodying or containing Confidential Information.

7.5 *Injunctive Relief; Remedies.* **CUSTOMER** acknowledges that its breach of this Agreement will irreparably harm **MARCO PHARMA**, and that the harm may not be susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, **MARCO PHARMA** will have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of this Agreement, without the necessity of posting a bond or other security.

8. REPRESENTATIONS; WARRANTIES.

In addition to any other representations and warranties contained herein, **CUSTOMER** represents and warrants that it has disclosed all facts, if any, pertaining to any restrictions on its ability to enter into this Agreement. **CUSTOMER** further represents and warrants that it is not bound by any Agreements with third parties that would prevent the lawful performance of this Agreement. **CUSTOMER** shall dispense the Product in accordance with prevailing standards of care in its field, and in accordance with applicable law and the requirements of this Agreement.

9. **LIQUIDATED DAMAGES.** (a) The **Parties** acknowledge and agree that if **CUSTOMER** fails to strictly comply with the requirements of Sections 2-6, **MARCO PHARMA** will be damaged and that the amount of damage to **MARCO PHARMA** will be difficult to determine. Therefore, **CUSTOMER** agrees to pay the amount of liquidated damages set forth in this Section. Liquidated damages are intended to compensate **MARCO PHARMA** for damages resulting from **CUSTOMER**'s breach of its obligations under Sections 2-6. **MARCO PHARMA** has the right to recover additional damages that are not based solely on **CUSTOMER**'s breach of Sections 2-6 in addition to liquidated damages. **MARCO PHARMA** will invoice **CUSTOMER** for any liquidated damages assessment and may retain liquidated damages from any payment otherwise due to **CUSTOMER** under this Agreement. Payment or assessment of liquidated damages does not release the **CUSTOMER**'s other obligation under this Agreement.

(b) If **CUSTOMER** fails to strictly comply with the requirements of Sections 2-6, then **CUSTOMER** will pay **MARCO PHARMA** liquidated damages in an amount equal to \$500.00 for each infraction per day. Each act of noncompliance with respect to an individual Product shall be considered an infraction. For example, if three Products are involved over a period of 10 days, then that would be considered 30 infractions subject to liquidated damages of \$15,000.00. The liquidated damages described above will constitute **MARCO PHARMA**'s exclusive monetary remedy for damages suffered as a result of **CUSTOMER**'s breach of Sections 2-6 or that of any of its owners, employees, agents or subcontractors. Nothing in this Section will preclude **MARCO PHARMA** from terminating this Agreement based on **CUSTOMER**'s breach at any time after an infraction, or from seeking monetary or other damages if **CUSTOMER** fails to perform its obligations in a manner that conforms in all respects to the requirements of this Agreement. **CUSTOMER** expressly acknowledges and agrees that the liquidated damages described in this Section are not a penalty and are

reasonable in light of the anticipated or actual harm caused by a breach, the difficulty of proving the amount of loss and the difficulty of otherwise providing an adequate remedy to **MARCO PHARMA** as a result of **CUSTOMER**'s breach of Sections 2-6.

10. INDEMNIFICATION.

CUSTOMER hereby agrees to hold harmless, defend and indemnify **MARCO PHARMA** and its affiliates and their respective members, officers, directors, employees, agents and insurers from and against any and all claims, demands, lawsuits, losses, damages, injuries (including personal injury, sickness, death or property damage), expenses (including attorney fees), and other liabilities of any kind or nature, whether sounding in contract, tort, strict liability or otherwise, brought by or resulting from claims by third **Parties** and based upon or arising out of any actual or alleged (i) negligence or intentional misconduct of, or non-performance or breach of this Agreement by, **CUSTOMER** or its employees, agents, contractors, subcontractors or consultants, (ii) breach of warranty as to the Products, (iii) strict product liability; or (iv) violation of applicable law by **CUSTOMER** or its employees, agents, contractors, subcontractors or consultants.

11. DISCLAIMER OF WARRANTIES; LIMITATION ON LIABILITY.

EXCEPT FOR THE WARRANTIES EXPRESSLY INCLUDED IN THIS AGREEMENT, MARCO PHARMA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS TO BE PROVIDED UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. MARCO PHARMA'S LIABILITY FOR MONEY DAMAGES, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCT TO BE PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED THE PRICE IN THE PURCHASE ORDER AT ISSUE. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE LEGAL THEORY OF LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY WHATSOEVER.

12. MISCELLANEOUS PROVISIONS.

12.1 *Jurisdiction; Venue.* This Agreement shall be governed in all respects by the laws of the State of Oregon without regard to conflict of laws provisions. **MARCO PHARMA** and **CUSTOMER** agree that the sole and exclusive venue and jurisdiction for disputes arising from this Agreement shall be the appropriate state or federal court located in Douglas County, Oregon, and **MARCO PHARMA** and **CUSTOMER** hereby submit to the jurisdiction of such courts.

12.2 *Attorney Fees.* If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the Party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or

defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

12.3 *Waiver.* Failure by either Party to enforce any of the terms and conditions of this Agreement shall not constitute or be deemed to be a waiver of such terms or conditions, or of the right thereafter to enforce all terms and conditions of this Agreement.

12.4 *Force Majeure.* Neither Party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, or other catastrophic event beyond the reasonable control of the affected Party, provided the affected Party immediately notifies the other Party and takes reasonable and expedient action to resume operations.

12.5 *Counterparts and Delivery.* This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Agreement. Facsimile signatures will be deemed original signatures for all purposes under this Agreement. Neither this Agreement, nor any amendment or modification of this Agreement may be executed by means of an electronic signature. When properly signed, this Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

12.6 *Integration.* This Agreement is the entire agreement between the Parties concerning its subject matter; and supersedes all prior and contemporaneous oral and written agreements, commitments, and understandings concerning its subject matter.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

MARCO PHARMA INTERNATIONAL, LLC

CUSTOMER: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____