



# BOIRON RESELLER AGREEMENT

THIS RESELLER AGREEMENT (this "**Agreement**") dated as of \_\_\_\_\_, \_\_\_\_\_, is entered into between Boiron, Inc. ("**Seller**") and \_\_\_\_\_ ("**Reseller**," and together with Seller, the "**Parties**," and each, a "**Party**").

## BACKGROUND

**A.** Seller is in the business of manufacturing and selling homeopathic products (the "**Goods**").

**B.** Reseller is in the business of selling Goods.

**C.** Seller desires to sell the Goods to Reseller and appoint Reseller as a non-exclusive reseller under the terms and conditions of this Agreement.

**D.** Reseller desires to purchase the Goods from Seller and resell the Goods to end users, subject to 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, intending to be legally bound hereby, the Parties hereto agree as follows:

### 1. Appointment.

1.1 Non-Exclusive Appointment. Seller hereby appoints Reseller, and Reseller hereby accepts the appointment, to act as a non-exclusive reseller of Goods to its customers during the Term in accordance with the terms and conditions of this Agreement. Except as otherwise set forth herein, Seller may in its sole discretion sell the Goods to any entity, including other distributors, retailers, and customers.

### 2. Obligations.

#### 2.1 Reseller Obligations. Reseller shall:

(a) uphold and abide by the quality standards, storage conditions, and other terms set forth in Seller's Brand Quality Guidelines ("**Brand Guidelines**"), which are incorporated herein and can be found on Seller's website at <https://www.boironusa.com/retailers/qmapp/>;

(b) review Seller's Minimum Advertising Price Policy ("**MAP Policy**"), which can be found here <https://www.boironusa.com/retailers/qmapp/>;

(c) refrain from reselling damaged, expired, used, returned, stolen, unauthorized, pirated or counterfeit Goods;

(d) refrain from listing Goods for sale on any online store, digital marketplace or domain without Seller's prior authorization, including without

limitation, Amazon.com, Walmart.com, eBay.com, Overstock.com and any other third-party marketplace or platform, liquidators, and wholesale discounters;

(e) not make any materially misleading or untrue statements concerning Seller or the Goods;

(f) refrain from diverting leftover, expired, or other Goods to any sellers, markets, liquidators, or wholesale discounters without the prior written approval of Seller;

(g) desist from repackaging Goods to create new SKUs without Seller's prior written approval;

(h) only sell the Goods to end users of the Goods; and

(i) not sell the Goods to any other resellers, distributors or for further distribution in any manner (each a "**Prohibited Customer**"). In the event Reseller discovers or becomes aware that it has sold Goods, or is informed by Seller that it has sold Goods, to a Prohibited Customer, Reseller shall: (i) immediately cease selling to such Prohibited Customer, (ii) demand that the Prohibited Customer return the Goods, and (iii) take such other action as reasonably required by the Seller.

2.2 Seller Obligations. Seller shall:

(a) provide Reseller with preferred, discounted or promotional pricing, in Seller's discretion, upon execution of this Agreement and full compliance with the terms hereof;

(b) allow Reseller to participate, at its own expense, in any marketing, advertising, promotion and sales programs or events that Seller may make generally available to its authorized resellers, provided that Seller may alter or eliminate any program at any time;

(c) approve or reject, in its discretion, any promotional information or material submitted by Reseller for Seller's approval; and

(d) provide promotional information and material, if available, for use by Reseller in accordance with this Agreement, in Seller's sole discretion.

3. Agreement to Purchase and Sell Goods.

3.1 Terms of Sale; Orders. Seller shall make available and sell Goods to Reseller at the prices and on the terms and conditions described in this Agreement.

3.2 Price. The prices for Goods sold under this Agreement shall be in accordance with Seller's then-current Reseller Price List. Subject to Section 5:

(a) 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;

(b) Reseller is responsible for all charges, costs, and taxes, provided that Reseller is not responsible for any taxes imposed on, or regarding, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets; and

(c) Reseller shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of **1%** per month or the highest rate permissible under applicable Law.

Reseller shall perform its obligations under this Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed or payable by Seller, whether relating to Seller's breach, bankruptcy, or otherwise and whether under this Agreement, any purchase order, any other agreement between Reseller or any of its affiliates and Seller, or otherwise.

3.3 Payment Terms. Seller shall issue Reseller an invoice upon receipt of Reseller purchase order or phone order. Reseller shall pay all properly invoiced amounts due to Seller within 31 days after Reseller's receipt of such invoice, except for any amounts disputed by Reseller in good faith within five (5) days of Reseller's receipt of the order to which the invoice relates.

Reseller shall make all payments in US dollars by **check, wire transfer, or automated clearing house**, in accordance with the wire instructions provided by the Boiron team.

3.4 Availability/Changes in Goods. Seller may, in its sole discretion, add or make changes to Goods, or remove Goods from the Reseller Price List upon notice to Reseller, in each case, without obligation to supply replacement or new goods.

#### 4. Orders Procedure.

4.1 Orders. Reseller shall issue all purchase orders to Seller via telephone, e-mail or EDI. By placing an order, Reseller makes an offer to purchase Goods under the following commercial terms listed in the purchase order and the terms and conditions of this Agreement, and on no other terms:

- (a) the listed Goods to be purchased;
- (b) the Reseller purchase order number;
- (c) bill to address;
- (d) the price for the Goods as reflected on the Reseller Price List;
- (e) the quantities ordered; and
- (f) the requested delivery date, if to be delayed.

Any variations made to the terms and conditions of this Agreement by Reseller in any purchase order, or otherwise, are void and have no effect.

4.2 Seller's Right to Accept or Reject Orders. Seller may, in its sole discretion, accept or reject any order. Seller may accept any order by confirming the order (whether by

written confirmation, invoice, or otherwise) or by delivering the Goods, whichever occurs first. No order is binding on Seller unless accepted by Seller as provided in this Agreement.

5. Shipment and Delivery.

5.1 Shipment and Delivery. Seller shall select the method of shipment and the carrier for the Goods. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods, each of which constitutes a separate sale and Reseller shall pay for the units shipped. All shipments of Goods shall be FOB Seller's location. Title to the Goods shall pass to Reseller upon payment in full. Risk of loss of the Goods shall pass to Reseller upon placement of the Goods with the carrier.

5.2 Inspection and Acceptance of Goods. Reseller shall inspect Goods received under this Agreement. On the 5th day after delivery of the Goods, Distributor shall be deemed to have accepted the Goods unless it earlier notifies Seller in writing that the Goods are damaged, defective, or otherwise do not conform to the Goods listed in the applicable purchase order; or were delivered to Reseller as a result of Seller's error.

If Reseller notifies Seller pursuant to this Section 5.2, then Seller shall, in its sole discretion, determine whether to authorize a return or provide a credit therefor.

If, and only if, Seller pre-approves a return of Goods, Reseller shall ship at its expense and risk of loss, the Goods to be returned under this 5.2 to Seller. If Seller approves the return of Goods, Seller shall issue Reseller a credit equal to seventy-five percent (75%) of the then current price on the Reseller Price List for the Goods returned.

Except as provided under this Section 5.2, all sales of Goods to Reseller under this Agreement are made on a one-way basis and Reseller has no other right to return Goods purchased under this Agreement. No credit will be issued by Seller to Reseller for customer returns or Goods damaged after receipt. Seller will not provide a return authorization for any Goods more than six (6) months past their stated expiration date.

6. Seller's Trademark License Grant. Subject to Seller's trademark policy, as posted on Seller's website at <https://www.boironusa.com/retailers/boiron-trademark-policy/>, which may be amended from time to time in Seller's sole discretion, Seller hereby grants to Reseller a revocable, non-exclusive, non-transferable, and non-sublicensable license during the Term (as hereinafter defined) solely on or in connection with the promotion, advertising, and resale of the Goods in accordance with the terms and conditions of this Agreement to use all Seller's trademarks, whether registered or unregistered, including the listed registrations and applications and any registrations, which may be granted pursuant to such applications. On expiration or earlier termination of this Agreement or upon Seller request, Reseller shall promptly discontinue the display or use of any trademark. Upon expiration or earlier termination of this Agreement, Reseller's rights under this Section 6 shall cease immediately. Other than the express licenses granted by this Section 6, Seller grants no right or license to Reseller, by implication, estoppels, or otherwise, to the Goods or any intellectual property rights of Seller or its affiliates.

7. Resale Prices. Reseller may unilaterally establish its own resale prices of the Goods, however, Reseller shall not do so in a manner that conflicts with or otherwise violates the MAP Policy.

8. Term; Termination.

8.1 Term. The term of this Agreement commences on the date set out in the preamble of this Agreement and shall continue for one (1) year, and shall thereafter renew for additional successive year long terms unless and until either Party provides notice of nonrenewal at least thirty (30) days before the end of the then-current term, or unless and until earlier terminated as provided under this Agreement. (the "**Term**"). Seller has the right in its sole discretion to revise, amend, supplement or replace this Agreement at any time or from time to time.

8.2 Termination Rights. Notwithstanding anything to the contrary in this Agreement, either Party may terminate this Agreement and the appointment of Reseller under Section 1, for any or no reason, at any time upon written notice to the other Party, and said termination shall become effective **thirty (30)** days following the delivery of such notice. In addition to any remedies that may be provided in this Agreement, Seller may immediately terminate this Agreement if Reseller:

(a) fails to pay any amount when due under this Agreement;

(b) is in breach of this Agreement, including specifically but not limited to violations of the MAP Policy or Brand Guidelines, and either the breach cannot be cured or, if the breach can be cured, it is not cured within **ten (10)** days following Seller's receipt of notice of such breach;

(c) if Reseller:

(i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;

(ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;

(iii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts;

(iv) makes or seeks to make a general assignment for the benefit of its creditors; or

(v) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement:

(a) All related purchase orders are automatically terminated;

(b) Reseller shall immediately cease to represent itself as Seller's authorized distributor regarding the Goods, and shall otherwise desist from all conduct (including use of any of Seller's trademarks or other intellectual property) or representations that might lead the public to believe that Reseller is authorized by Seller to sell the Goods; and

(c) Reseller shall promptly return all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Confidential Information (as hereinafter defined);

(d) With respect to Goods that have not been sold as of the Termination Date, Seller shall have to option to process a return of Reseller's unsold Goods in the sole and absolute discretion of Seller's account representative; and

(e) Reseller shall immediately and forever cease selling the Goods.

9. Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Reseller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential (collectively, the "**Confidential Information**"), solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Seller shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is in the public domain; known to Reseller at the time of disclosure; or rightfully obtained by Reseller on a non-confidential basis from a third party.

10. Indemnification.

10.1 Indemnification. Subject to the terms and conditions of this Agreement, Reseller shall indemnify, hold harmless, and defend Seller 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, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, relating to any claim of a third party arising out of or occurring in connection with:

(a) Reseller acts or omissions as Reseller of the Goods, including breach of this Agreement;

(b) Reseller's advertising or representations that warrant performance of Goods;

(c) any failure by Reseller or its personnel to comply with any applicable laws; or

(d) allegations that Reseller breached its agreement with a third party as a result of, or in connection with, entering into, performing under or terminating this Agreement.

11. Limitation of Liability. EXCEPT FOR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT:

(a) IS SELLER LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED

DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF:

(i) WHETHER THE DAMAGES WERE FORESEEABLE;

(ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND

(iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) ON WHICH THE CLAIM IS BASED.

(b) SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO SELLER UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12. THE FOREGOING LIMITATIONS APPLY EVEN IF THE RESELLER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The terms of this Agreement 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.

14. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement. All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement.

15. Assignment. Reseller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Reseller of any of its obligations hereunder. Seller may at any time assign, transfer, or subcontract any or all of its rights or obligations under this Agreement without Reseller's prior written consent.

16. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

17. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement,

express or implied, confers on any other person or entity (including any customer) any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

18. Choice of Law and Forum. This Agreement and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. Each Party agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, and all contemplated transactions in any forum other than the United States District Court for the Eastern District of Pennsylvania or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Pennsylvania Delaware County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission, including any electronic means by which a Party “clicks” its acceptance in an electronic document, is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Boiron, Inc.

By \_\_\_\_\_

Name:

Title:

[RESELLER NAME]

By \_\_\_\_\_

Name:

Title: