

Health Care Professional Reseller Agreement

This Agreement is made as of _____, 2018 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. Reseller is a health care professional that wishes to purchase and resell Products to its patients or clients. FSC agrees to sell, and Reseller agrees to buy, 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 Products ordered. FSC may accept such orders either by issuing an order confirmation or by shipping 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 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 Products.** Reseller agrees as follows:
 - a. It will sell or provide Products only to end users of the Products who are under such Reseller’s care.
 - b. It will not sell any Products after any expiration date on the Products’ label or otherwise provided by FSC to the Reseller.
 - c. It not sell any Products that have been tampered with or are otherwise damaged.
 - d. It will sell Products only in the United States.
 - e. It will not make false or misleading statements about Products or make any representations or claims with respect to Products that are not contained within or are inconsistent with FSC’s literature describing Products.
3. **Advertised Pricing.** FSC has implemented a minimum advertised price policy (“MAP Policy”). A copy of FSC’s current MAP Policy is appended to this Agreement as **Exhibit A**, and shall be subject to change from time to time. FSC neither solicits nor will it accept any assurance of compliance with the MAP Policy. The MAP Policy does not apply to the price at which Products are actually sold. The Reseller is free to set its actual resale prices for any Product independently.

4. Internet Policy. The 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. The Reseller is not, however, permitted to sell FSC Products to ecommerce site operators for resale to end users or to use fulfilled-by-Amazon (FBA) services (i.e., Amazon holds inventory and fulfills orders). The Reseller is not permitted to sell Products on auction sites such as eBay. The Reseller is not permitted to purchase keyword advertising on any internet site, such as Google, Yahoo, MSN Search, etc., using keywords that include FSC brands or refer to any FSC Products. The Reseller is not permitted to use FSC brands in any third party online advertising copy or to link to, co-opt, add any variations or add on to any official FSC product pages on any marketplace platforms. The Reseller may not add to or attach any product variations on to FSC ASINs on Amazon. The Reseller agrees to use on its website or marketplace websites only content that is provided and/or approved by FSC. See below to enter store names.

5. DaVinci Labs Benefits Line. Notwithstanding the terms of Section 4, in the event that Reseller purchases Products that are part of the “DaVinci Labs Benefits Line,” Reseller agrees that such Products may not be marketed or sold utilizing any ecommerce marketplaces. To the extent that Reseller wishes to sell such Products to end users using the internet, Reseller is permitted to use only a website that is branded as a site owned by the Reseller and Reseller must perform its own warehousing and fulfillment functions.

6. Trademarks. Subject to Section 4, the Reseller is authorized to use FSC’s name and trademarks in the normal course of advertising and selling the Products. All trademarks on the Products or collateral materials supplied by FSC are the property of FSC unless noted otherwise. The Reseller agrees not to remove or efface any labels or packaging, or to add additional labeling to the Products. Upon termination of this Agreement, the Reseller shall immediately cease representing itself as a Reseller of FSC and shall cease use of all FSC names and trademarks, and any signs, web pages or other material identifying the Reseller as a Reseller of FSC Products shall be removed.

7. Warranties; Limitation of Damages. FSC expressly warrants that (i) all Products sold under this Agreement shall be manufactured in accordance with cGMP regulatory requirements applicable in the United States; (ii) the Products are not adulterated; (iii) the Products contain the ingredients in the amounts that have been specified on the label; and (iv) the 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.

8. 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 forum or other challenge to venue in such court and (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. In the event of litigation between the parties relating to enforcement of rights or obligations under this 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.

9. 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: _____

Exhibit A

Minimum Advertised Price Policy (MAP)

FoodScience Corporation (“FSC”) has determined that its interests are best served by adopting a minimum advertised price (“MAP”) policy. This MAP policy is designed to (i) support the FSC brand as a premium offering; and (ii) assure that our health care professional resellers are incentivized to provide desirable pre-sales and post-sales services to the end-users of our products. FSC is confident that this policy will strengthen its competitiveness and benefit all of the health care professionals who resell our products.

Policy Coverage.

This MAP policy applies to all resellers of the FSC products identified by FSC as being covered by this policy, regardless of channel of sale, who sell, directly or indirectly, to end-users located in the United States. FSC will, without assuming any liability, unilaterally impose sanctions as described in this policy against resellers who advertise FSC products at prices below those specified herein.

This MAP policy applies only to minimum advertised prices and does not apply to the price at which the products are actually sold, or to advertised prices higher than the unilateral minimum resale prices established by FSC from time to time. The policy applies to all advertisements of FSC products in all media including, without limitation, flyers, posters, coupons, mailers, inserts, newspapers, magazines, catalogs, mail order catalogs, Internet or similar electronic media, television, radio and public signage.

Minimum Advertised Price.

A reseller shall be in violation of this MAP policy if it offers FSC products for sale at a net adjusted price less than the MAP established by FSC. The term “net adjusted price” means the advertised price after taking into account all discounts, deductions, coupon offerings, rebates or allowances (except such rebates or other promotions that are provided by FSC). Charges for taxes, shipping, delivery and insurance shall be excluded in determining the net adjusted price. The current listing of products and applicable MAP prices are <https://www.davincilabs.com/>. The products covered by this MAP policy and the MAP may be changed from time to time at FSC’s sole discretion. FSC resellers are responsible for remaining current with MAP policy, products and pricing.

Policy Violations.

In the event a reseller chooses not to follow the FSC MAP policy, sanctions will be unilaterally imposed by FSC.

Violations of MAP policy shall be determined by FSC in its sole discretion. This MAP policy will be uniformly enforced. FSC will not accept any communication from a reseller who has

violated this MAP policy regarding the violation or the willingness of the reseller to bring its prices or practices into compliance with the MAP policy.

Policy Modifications.

FSC reserves the right at any time to modify, suspend, or discontinue the MAP policy in whole or in part or designate promotional periods during which the terms of the policy may change.

Unilateral Action.

This policy has been unilaterally adopted by FSC. FSC is not seeking agreement from any reseller to adhere to this MAP policy. It is entirely within the discretion of the reseller whether to comply or not comply. FSC will not discuss any conditions of acceptance related to this MAP policy, as it is non-negotiable, and will not be altered for any reseller. FSC neither solicits, nor will it accept, any assurance of compliance with this MAP policy. Nothing in this MAP policy or in any other contract or agreement with FSC shall constitute an agreement between FSC and the reseller that the reseller will comply with this MAP policy.

Effective Date.

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 / (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 imposed under this policy.

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