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# PRODUCT RESELLER AGREEMENT

This Product Reseller Agreement (the “*Agreement*”), is entered into by and between CLOVE HILL LLC, a COLORADO LLC having its principal place of business at 4325 N Harlan St Wheat Ridge, CO 80033 (“*Supplier*”), and the User (“*Reseller*”, and together with Supplier, the “*Parties*”, and each, a “*Party*”).

## RECITALS

**WHEREAS**, Supplier is in the business of manufacturing and selling the Products (as defined below);

**WHEREAS**, Reseller is in the business of marketing and reselling products that are similar in kind and/or 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:

## ARTICLE I DEFINITIONS

Capitalized terms have the meanings set out in this Section, or in the Section in which they first appear in this Agreement.

“*Action*” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, whether civil, criminal, administrative, regulatory, or other, and whether at law, in equity, or otherwise.

“*Affiliate*” of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, this Person.

“*Agreement*” has the meaning set out in the preamble.

“*Business Day*” means any day except Saturday, Sunday, or a federal or Colorado holiday.

“*Claim*” means any Action made or brought against a Person entitled to indemnification under ARTICLE XVII.

“*Committed Products*” has the meaning set out in Section 14.07.

**“Competitive Transaction”** has the meaning set out in Section 2.02.

**“Confidential Information”** has the meaning set out in ARTICLE XV.

**“Control”** (and with correlative meanings, the terms “Controlled by” and “under common Control with”) means, regarding any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

**“Defective”** means not conforming to the warranties in Section 16.02.

**“Defective Goods”** means goods that are Defective, which for the avoidance of doubt, includes any Nonconforming Goods accepted by Reseller under Section 9.04.

**“Delivery Point”** means the street address specified in the applicable Purchase Order.

**“Disclosing Party”** has the meaning set out in Section 15.01.

**“Dispute”** has the meaning set out in Section 20.18.

**“Dispute Notice”** has the meaning set out in Section 20.18.

**“Effective Date”** means the date first set out above.

**“End User”** means the final purchaser that (a) has acquired a Product from Reseller for (i) its own internal use and not for resale, remarketing, or distribution or (ii) incorporation into its own products and (b) is an individual or entity, other than any federal, state, or local agency, office, or division, located in the Territory.

**“Excess Product”** means a Product that, when counted together with all other same and similar Products received by Reseller under the same Purchase Order, is in excess of the quantities of the Products ordered under that Purchase Order.

**“Force Majeure Event”** has the meaning set out in Section 20.20.

**“Governmental Authority”** means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of the government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of this organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, award, or determination entered by or with any Governmental Authority.

**“Initial Term”** has the meaning set out in Section 14.01.

**“Inspection Period”** has the meaning set out in Section 9.04.

**“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, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; (f) semiconductor chips, mask works and the like; and (g) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the Laws of any jurisdiction throughout in any part of the world.

**“Last-time Buy Period”** has the meaning set out in Section 7.02(a).

**“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.

**“Limited Warranty”** has the meaning set out in Section 16.02.

**“Losses”** has the meaning set out in Section 17.01.

**“NFR Products”** has the meaning set out in Section 6.01(e).

**“Nonconforming Goods”** means any product received by Reseller from Supplier under a Purchase Order that: (a) is not a Product; (b) does not conform to the Product(s) listed in the applicable Purchase Order; or (c) on visual inspection, Reseller reasonably determines are otherwise Defective.

**“Notice”** has the meaning set out in Section 20.04.

**“Notify”** means to give Notice.

**“Party”** has the meaning set out in the preamble to this Agreement.

**“Patents”** means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models).

**“Payment Failure”** has the meaning set out in Section 14.03(a).

**“Person”** means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity.

“**Personnel**” means agents, employees, or subcontractors engaged or appointed by Supplier or Reseller.

“**Post-term Resale Period**” has the meaning set out in Section 14.06.

“**Price**” has the meaning set out in Section 10.01.

“**Products**” means those products that are identified in Schedule 1, as Supplier may amend in accordance with Section 7.02. For the purposes of ARTICLE IX, Products are deemed to include Nonconforming Goods.

“**Purchase Order**” means Reseller’s then-current standard form purchase order through www.clovehill.com.

“**Receiving Party**” has the meaning set out in Section 15.01.

“**Renewal Term**” has the meaning set out in Section 14.02.

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

“**Reseller**” has the meaning set out in the preamble of this Agreement.

“**Reseller Contract**” means any contract or agreement to which Reseller is a party or to which any of its material assets are bound.

“**Reseller Indemnified Party**” has the meaning set out in Section 17.03.

“**Reseller Indemnifying Party**” has the meaning set out in Section 17.01.

“**Supplier**” has the meaning set out in the preamble of this Agreement.

“**Supplier Indemnified Party**” has the meaning set out in Section 17.01.

“**Supplier Indemnifying Party**” has the meaning set out in Section 17.03.

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

“**Supplier’s Trademarks**” means all Trademarks owned by or licensed to Supplier and set out in Schedule 2.

“**Term**” has the meaning set out in Section 14.02.

“**Territory**” has the meaning set out in Schedule 3.

“**Third Party Product**” has the meaning set out in Section 16.06.

“**Trademarks**” means all rights in and to US and foreign trademarks, service marks, trade dress, 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 and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

“**US**” means the United States of America, including its territories, possessions, and military bases.

“**Warranty Period**” has the meaning set out in the written warranty statement provided by Supplier to End User as described in Section 16.02.

## **ARTICLE II APPOINTMENT AS RESELLER**

**Section II.01 Non-Exclusive Appointment.** Supplier hereby appoints Reseller, and Reseller accepts the appointment, to act as a non-exclusive reseller of Products to End Users located in the Territory during the Term and the Post-term Resale Period solely in accordance with the terms and conditions of this Agreement. Supplier may in its sole discretion sell the Products to any other Person, including resellers, retailers, and End Users in and outside the Territory.

**Section II.02 Right to Resell Competitive Products.** This Agreement does not preclude Supplier from entering into an agreement (a “**Competitive Transaction**”) with any other Person related to the sale, resale, or distribution of other goods or products, including those that are similar to or competitive with the Products.

## **ARTICLE III NO FRANCHISE OR BUSINESS OPPORTUNITY AGREEMENT**

**Section III.01 No Franchise or Business Opportunity Agreement.** The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Supplier and Reseller. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Reseller has the sole discretion to determine Reseller’s methods of operation, Reseller’s accounting practices, the types and amounts of insurance Reseller carries, Reseller’s personnel practices, Reseller’s advertising and promotion, Reseller’s customers, and Reseller’s service areas

and methods. The relationship created hereby between the parties is solely that of Supplier and Reseller. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then Supplier may terminate this Agreement.

#### **ARTICLE IV TERMS OF AGREEMENT PREVAIL OVER RESELLER'S PURCHASE ORDER**

**Section IV.01 Terms of Agreement Prevail Over Reseller's Purchase Order.** This Agreement is expressly limited to the terms of this Agreement and the terms contained in the applicable online Purchase Order. 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.

#### **ARTICLE V GENERAL RESELLER PERFORMANCE OBLIGATIONS**

**Section V.01 Marketing and Reselling Products.** Reseller shall, in good faith and at its own expense:

- (a) complete the training details as set forth in **Exhibit A**.
- (b) market, advertise, promote, and resell the Products to End Users located in the Territory consistent with good business practice, in each case using its commercially reasonable efforts to maximize the sales volume of the Products;
- (c) only resell or offer to resell the Products that Reseller currently has in inventory or that have been ordered from Supplier and which order has been accepted by Supplier as available for delivery to Reseller, unless Reseller has received prior written authorization from Supplier;
- (d) develop and execute a marketing plan sufficient to fulfill its obligations under this Agreement;
- (e) have sufficient knowledge of the industry and products competitive with each Product (including specifications, features and benefits) so as to be able to explain in detail to the End Users:
  - (i) the differences between the Product and competing products; and
  - (ii) information on standard protocols and features of each Product;
- (f) observe all reasonable 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;

(g) 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;

(h) 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;

(i) promptly Notify Supplier of and address and investigate 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; and

(j) upon request by Supplier, provide Supplier with a current and accurate list of all of its retail selling locations or outlets.

**Section V.02 Reporting and Recordkeeping.** Reseller shall, at its own expense:

(a) maintain books, records and accounts of all transactions and activities covered by this Agreement and permit full examination thereof by Supplier and its Representatives.

**Section V.03 Authority to Perform Under this Agreement.** Reseller shall, at its own expense, obtain and maintain in good standing all required product certifications and esthetician licenses necessary to conduct business in accordance with this Agreement.

**Section V.04 Limited End User Support.** On and after the Training Completion Date, Reseller shall, at its own expense:

(a) have sufficient knowledge of the industry and products competitive with the Product (including specifications, features, and benefits) so as to be able to explain in detail to the End Users the differences between the Product and competing products;

(b) ensure that an adequate number of trained, capable, and qualified technical Personnel with sufficient knowledge of the Product are available to assist End Users; and

(c) respond to the End Users regarding the general operation and use of the Product, including:

(i) acting as a liaison between the End User and Supplier in matters requiring Supplier's participation;

(ii) providing general Product information and configuration support on standard protocols and features; and

(iii) collecting relevant technical problem identification information.



Except as explicitly authorized in this Agreement or in a separate written agreement with Supplier, Reseller may not service, repair, modify, alter, replace, reverse engineer, or otherwise change the Products it sells to End Users.

**Section V.05 Government Approval.** If at any time during the Term or the Post-term Resale Period any notification, registration or approval is required for giving legal effect in any applicable jurisdiction to this Agreement or the transactions contemplated under this Agreement, Reseller shall:

- (a) immediately take whatever steps may be necessary to properly notify, register or obtain approval;
- (b) be responsible for any charges incurred in connection with notifying, registering or obtaining this approval; and
- (c) keep Supplier currently informed of its efforts regarding this Section 5.05.

Supplier is not obligated to ship any Products or other materials to Reseller under this Agreement until Reseller has provided Supplier with satisfactory evidence that this approval, notification or registration is not required or that it has been obtained.

**Section V.06 Prohibited Acts.** Notwithstanding anything to the contrary in this Agreement, neither Reseller nor Reseller Personnel shall:

- (a) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:
  - (i) actually, apparently, or ostensibly on behalf of Supplier, or
  - (ii) to any End User regarding the Products, which representations, warranties, guarantees, indemnities, similar claims, or other commitments are additional 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;
- (b) engage in any unfair, competitive, misleading, or deceptive practices respecting Supplier, Supplier's Trademarks or the Products, including any product disparagement or "bait-and-switch" practices;
- (c) separate any software or accessories sold, bundled, or packaged with any Product from the Product or sell, license, or distribute the software on a standalone basis, or remove, translate, or modify the contents or documentation of or related to the software or accessories, including, without limitation, any end user license agreements or warranty statements;

(d) sell or offer to sell any of the Products or other Supplier-branded products, other than the Products purchased by Reseller from Supplier or from a distributor authorized by Supplier to sell the same to Reseller;

(e) sell, either directly or indirectly, or assign or transfer, any Products to any Person when Reseller knows or has reason to suspect that the Person may resell any or all of the Products to a third party, including any third party reseller or distributor;

(f) sell or show any NFR Product to any third party, except to demonstrate the NFR Product to one or more prospective End Users;

(g) during the Term and the Post-term Resale Period manufacture, promote, market, sell, or distribute Products using promotional information and material, unless the promotional information or material was provided by Supplier under Section 6.01(d);

(h) during the Term or the Post-term Resale Period cease to function actively as a full-service reseller of available Supplier Products (which such Products may be updated from time to time as listed on Schedule 1); or

(i) at any time during the Term, sell Products through any unapproved online platform, including, but not limited to, Amazon.com and eBay.com.

**Section V.07 Restriction on Purchase of Products with Active Ingredients.** Products containing active ingredients (as set forth in Schedule 1 of this Agreement), may only be purchased by Reseller for and on behalf of Reseller clients for whom Reseller has performed the Required Consultation and Ongoing Care.

(a) “Required Consultation” shall, at a minimum, include:

(i) Correspondence between Reseller and the client in-person, via phone, or video.

(ii) Visual evaluation by the licensed professional, which may be done in-person, by video or photos.

(iii) An analysis and consultation utilizing the acne consultation package provided by Clove Hill, including: Client Questionnaire, Acne Consultation, Lifestyle Choices Affecting Acne, Skin Analysis, and Client Agreement.

(b) “Ongoing Care” shall, at a minimum, include ongoing communication and evaluation of the client’s treatment plan, continued visual skin analysis via video, photo, or in-person until client is clear.

(c) By purchasing Products with active ingredients, Reseller is certifying that the products are being purchased for clients for whom Reseller has performed or are performing the required consultation and ongoing care. For additional information on what constitutes as compliant, see Schedule 1.

**Section V.08 Violation Escalation Policy.** Supplier will follow the course of action set forth below in the event that Reseller violates the terms of the Agreement, as determined by Supplier in its sole discretion.

(a) First Violation

(i) Reseller will receive a warning.

(ii) A Supplier team member will contact Reseller to notify Reseller of the violation, and Reseller shall have 30 days to correct or cure such violation. If Reseller fails to make the correction within such 30-day period, Reseller will be notified by phone or e-mail that Reseller's account is temporarily suspended until the necessary changes are made.

(b) Subsequent Violations

(i) A purchasing hold will be placed on Reseller's account.

(ii) A Supplier team member will contact Reseller to notify Reseller of the second violation, and that Reseller's account is locked until the violation is resolved. Reseller will need to contact Supplier when the violation is resolved to reactivate Reseller's account.

(c) In the event of consistent or multiple violations of the terms of this Agreement, Supplier reserves the right to take further action it deems necessary or appropriate in its sole discretion, up to and including termination of its Agreement with Reseller.

## **ARTICLE VI SUPPLIER PERFORMANCE OBLIGATIONS**

**Section VI.01 Supplier Performance Obligations.** During the Term and the Post-term Resale Period, Supplier shall:

(a) provide any information and support that may be reasonably requested by Reseller regarding the marketing, advertising, promotion, and sale of Products sold to Reseller under this Agreement;

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

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

(d) provide promotional information and material free of charge for use by Reseller in accordance with this Agreement; and

(e) provide to Reseller at no charge products that are not intended for resale (“*NFR Products*”). Reseller shall promptly return all NFR Products to Supplier on the expiration or earlier termination of this Agreement as provided for in Section 14.05(c)(i). Supplier retains all rights, title and interest in and to all NFR Products before, during and after the Term.

## **ARTICLE VII AGREEMENT TO PURCHASE AND SELL THE PRODUCTS**

**Section VII.01 Terms of the Sale.** Supplier shall sell Products to Reseller at the Prices and on the terms and conditions set out in this Agreement.

**Section VII.02 Availability/Changes in Products.** Supplier may, in its sole discretion:

(a) remove Products from Schedule 1 on 14 Business Days’ Notice to Reseller (the period of time from the delivery of Notice through the end of the Notice period, the “*Last-time Buy Period*”); and

(b) add to the Products on Schedule 1 without Notice to Reseller; and

(c) without Notice to Reseller, make changes to any Products or parts/accessories thereto (except where continued availability is required by Law),

in each case, without obligation to modify or change any Products previously delivered or to supply new Products meeting earlier specifications, except as may be required under Section 7.03.

**Section VII.03 Last-time Buy.** Reseller may make one last-time buy during the Last-time Buy Period of enough Products to fulfill its then-pending commitments to the End Users. Supplier shall use commercially reasonable efforts to supply the last time buy and is in no event required to supply any Product if Supplier determines that:

(a) the Product is infringing;

(b) the sale would violate the Law;

(c) the sale would limit Supplier’s ability to fill orders of its other customers;

or

(d) it does not have an adequate inventory of Products to fill the last-time buy order.

## **ARTICLE VIII ORDERS PROCEDURE**

**Section VIII.01 Purchase Order.** Reseller shall issue all Purchase Orders online via [www.clovehill.com](http://www.clovehill.com). By placing a Purchase Order, Reseller makes an offer to purchase Products under the terms and conditions of this Agreement, including the terms of the online Purchase Order, and on no other terms. Any variations made to the terms and conditions of this Agreement by Reseller in any Purchase Order are void and have no effect.

**Section VIII.02 Supplier's Right to Accept or Reject Purchase Orders.** Supplier may, in its sole discretion, accept or reject any Purchase Order. Supplier may accept any Purchase Order by confirming the order (whether by written confirmation, invoice, or otherwise) or by delivering the Products, whichever occurs first. No Purchase Order is binding on Supplier unless accepted by Supplier as provided in this Agreement.

### **Section VIII.03 Cancellation of Purchase Orders.**

(a) Supplier may, in its sole discretion, without liability or penalty, cancel any Purchase Order placed by Reseller and accepted by Supplier, in whole or in part:

(i) if Supplier discontinues its sale of Products or reduces or allocates its inventory of Products;

(ii) if Supplier determines that Reseller is in violation of its payment obligations or has materially breached or is in material breach of this Agreement;  
or

(b) With the exception of Reseller's right under [Section 9.03](#) to cancel a Purchase Order, Reseller has no right to cancel or amend any Purchase Order submitted by it.

## **ARTICLE IX SHIPMENT AND DELIVERY**

**Section IX.01 Shipment.** Unless expressly agreed to by the Parties in writing, Supplier shall select the method of shipment of and the carrier for the Products. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Products to Reseller. Each shipment constitutes a separate sale, and Reseller shall pay for the units shipped, whether the shipment is in whole or partial fulfillment of a Purchase Order.

**Section IX.02 Delivery.** Unless expressly agreed to by the Parties, Supplier shall deliver the Products to the Delivery Point, using Supplier's or manufacturer's standard methods for packaging and shipping the Products. All Prices are FOB (place of shipment).

**Section IX.03 Late Delivery.** Any time quoted for delivery is an estimate only; *provided, however*, that Supplier shall use commercially reasonable efforts to deliver all Products on or before the requested delivery date. Subject to [Section 20.20](#), Supplier is not liable for or in respect

of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery Subject to Reseller's rights under this Section 9.03, no delay in the shipment or delivery of any Product relieves Reseller of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products.

**Section IX.04 Inspection.** Reseller shall inspect Products received under this Agreement within 5 Business Days of receipt (the "*Inspection Period*") of the Products and either accept or, if any Products are Nonconforming Goods or Excess Products, reject these Products. Reseller will be deemed to have accepted the Products unless it Notifies Supplier in writing of any Nonconforming Goods or Excess Products during the Inspection Period and furnishes written evidence or other documentation as required by Supplier. If Reseller timely Notifies Supplier of any Nonconforming Goods or Excess Products, Supplier shall determine, in its sole discretion, whether the Products are Nonconforming Goods or Excess Products. If Supplier determines that the Products are Nonconforming Goods or Excess Products, it shall either, in its sole discretion:

(a) if the Products are Nonconforming Goods, (i) replace the Nonconforming Goods with conforming Products, or (ii) refund the Price for the Nonconforming Goods, together with all shipping expenses incurred by Reseller in connection therewith; or

(b) if the Products are Excess Products, refund the Price for the Excess Products, together with all related shipping and handling expenses incurred by Reseller in connection therewith.

Reseller shall ship, at Supplier's expense, all Nonconforming Goods and Excess Products to Supplier's facility located at 4800 Dahlia Street, Suite D-10, Denver, CO 80216. If Supplier exercises its option to replace Nonconforming Goods, Supplier shall, after receiving Reseller's shipment of Nonconforming Goods, ship to Reseller, at Supplier's expense, the replaced Products to 4800 Dahlia Street, Suite D-10, Denver, CO 80216.

Reseller acknowledges and agrees that the remedies set out in Section 9.04(a) and Section 9.04(b) are Reseller's exclusive remedy for the delivery of Nonconforming Goods or Excess Products, subject to Reseller's rights under Section 16.02 and Section 16.04 regarding any Nonconforming Goods for which Reseller has accepted delivery under this Section 9.04.

**Section IX.05 Limited Right of Return.** Except as provided under Section 9.04, Section 16.02 and Section 16.04, all sales of Products to Reseller under this Agreement are made on a one-way basis and Reseller has no right to return Products purchased under this Agreement.

**Section IX.06 Title and Risk of Loss.**

(a) Title to Products shipped under any Purchase Order passes to Reseller on receipt by Reseller..

(b) Risk of loss to Products shipped under any Purchase Order passes to Reseller upon Supplier's delivery of such Products to the carrier at the FOB place of shipment.

## **ARTICLE X PRICE AND PAYMENT**

**Section X.01 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**").

**Section X.02 Shipping Charges, Insurance and Taxes.** Supplier or Reseller shall pay for shipping charges and insurance costs in accordance with the commercial terms selected by the Parties under ARTICLE IX. 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, 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.

## **ARTICLE XI RESALE OF THE PRODUCTS**

**Section XI.01 Credit Risk on Resale to End Users.** Reseller is responsible for all credit risks regarding, and for collecting payment for, all products (including Products) sold to third parties (including End Users), whether or not Reseller has made full payment to Supplier for the products. The inability of Reseller to collect the purchase price for any product does not affect Reseller's obligation to pay Supplier for any Product.

**Section XI.02 Resale Prices.** Supplier unilaterally establishes resale prices and terms regarding products it sells, including Products. Reseller shall set the resale price for Products in conformity with manufacturer's suggested retail price in Schedule 1.

## **ARTICLE XII COMPLIANCE WITH LAWS**

**Section XII.01 General Compliance With Laws Representation and Warranty.** Reseller represents and warrants to Supplier that it is in material compliance with all Laws and Reseller Contracts applicable to this Agreement, the Products and the operation of its business.

**Section XII.02 General Compliance With Laws Covenant.** Reseller shall at all times comply with all Laws. Without limiting the generality of the foregoing, each party shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses, and permits necessary to conduct that portion of its business relating to the exercise of its rights and the performance of its obligations under this Agreement.

## **ARTICLE XIII INTELLECTUAL PROPERTY RIGHTS**

**Section XIII.01 Ownership.** Subject to the express rights and licenses granted by Supplier in this Agreement, Reseller acknowledges and agrees that:

(a) any and all Supplier's Intellectual Property Rights are the sole and exclusive property of Supplier or its licensors;

(b) Reseller shall not acquire any ownership interest in any of Supplier's Intellectual Property Rights under this Agreement;

(c) 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;

(d) 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

(e) 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.

**Section XIII.02 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 13.02. Supplier hereby grants to Reseller a revocable, non-exclusive, non-transferable, and non-sublicensable license to use Supplier's Trademarks in the Territory during the Term and the Post-term Resale Period 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.

**Section XIII.03 License to Translated Marketing Materials and Other Documentation.** To the extent that Reseller translates or causes to be translated, any of Supplier's marketing materials, user manuals, or other documentation, Reseller hereby irrevocably assigns all copyrights in these translations to Supplier, subject to a non-exclusive, non-transferable, and non-sublicensable license to Reseller, hereby granted by Supplier, to use the translations in the Territory during the Term and the Post-term Resale Period solely on or in connection with the promotion, advertising, resale, or use of the Products permitted under this Agreement.

**Section XIII.04 Prohibited Acts.** Reseller shall not:



- (a) take any action that may interfere with any of Supplier's rights in or to Supplier's Intellectual Property Rights, including Supplier's ownership or exercise thereof;
- (b) challenge any right, title, or interest of Supplier in or to Supplier's Intellectual Property Rights;
- (c) make any claim or take any action adverse to Supplier's ownership of Supplier's Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for Supplier's Trademarks or any other Trademark that is similar to Supplier's Trademarks or that incorporates Supplier's Trademarks in whole or in confusingly similar part;
- (e) use any mark, anywhere, that is confusingly similar to Supplier's Trademarks;
- (f) 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;
- (g) misappropriate any of Supplier's Trademarks for use as a domain name without prior written consent from Supplier; and
- (h) alter, obscure, or remove any of Supplier's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Products), marketing materials, or other materials that Supplier may provide.

**Section XIII.05 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.

**Section XIII.06 No Continuing Rights.** On expiration or earlier termination of this Agreement, subject to Reseller's rights under the Post-term Resale Period:

- (a) Reseller's rights under Section 13.02 cease immediately; and
- (b) 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.

#### **ARTICLE XIV TERM; TERMINATION**

**Section XIV.01 Initial Term.** The term of this Agreement commences on the Effective Date and continues for a period of one year, unless and until earlier terminated as provided under this Agreement or applicable law (the “*Initial Term*”).

**Section XIV.02 Renewal Term.** On expiration of the Initial Term, this Agreement automatically renews for additional successive nine, one-year terms unless and until either Party provides Notice of nonrenewal at least 90 Business Days before the end of the then-current term, or unless and until earlier terminated as provided under this agreement or applicable Law (each a “*Renewal Term*” and together with the Initial Term, the “*Term*”). If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term are the same as the terms in effect immediately before such renewal, subject to any change in Prices payable for the Products and payment terms during the applicable Renewal Term as set out in ARTICLE X or changes to or in availability of the Products as set out in Section 7.02. If either Party provides timely Notice of its intent not to renew this Agreement, then, subject to Section 14.01, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

**Section XIV.03 Supplier’s Right to Terminate.** Supplier may terminate this Agreement by providing Notice to Reseller:

- (a) if Reseller fails to pay any amount when due under this Agreement (“*Payment Failure*”) and the failure continues for 30 Business Days after Reseller’s receipt of Notice of nonpayment;
- (b) if within any 12-month period, 3 or more Payment Failures occur;
- (c) if, subject to Section 5.08, 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 30 Business Days after Reseller’s receipt of Notice of such breach;
- (d) under and in accordance with Section 3.01;
- (e) if Reseller 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;
- (f) if Reseller fails to observe or perform any term, covenant, or condition of Reseller’s under any agreement with Supplier, other than this Agreement, and the default continues beyond any grace period set out in the other agreement for the remedying of the default;
- (g) if Reseller:

(i) sells, leases, exchanges, transfers, or disposes of a material portion of Reseller's assets;

(ii) merges or consolidates with or into any other Person, unless the surviving entity has a net worth greater than or equal to its net worth immediately before the merger or consolidation; or

(iii) undergoes a change of Control, in any case without Supplier's prior written consent; or

(h) in the event of a Force Majeure Event affecting Reseller's performance under this Agreement for more than 60 consecutive days.

Any termination under this Section 14.03 is effective on Reseller's receipt of Supplier's Notice of termination or any later date set out in the Notice.

**Section XIV.04 Reseller's Right to Terminate.** Reseller may terminate this Agreement by providing Notice to Supplier:

(a) if Supplier materially breaches any material provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Supplier within 60 Business Days after Supplier's receipt of Notice of breach;

(b) if Supplier 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; or

(c) in the event of a Force Majeure Event affecting Supplier's performance under this Agreement for more than 60 consecutive Business Days.

Any termination under this Section 14.04 is effective on Supplier's receipt of Reseller's Notice of termination or any later date set out in the Notice.

**Section XIV.05 Effect of Expiration or Termination.**

(a) The Term's expiration or earlier termination does not affect any rights or obligations that:

(i) are to survive the expiration or earlier termination of this Agreement under Section 20.03; and

(ii) were incurred by the Parties before the expiration or earlier termination; provided that if Supplier terminates this Agreement under Section 14.03(a), Section 14.03(b) or Section 14.03(c) all indebtedness of Reseller to Supplier of any kind is immediately due and payable on the effective date of the Term's expiration or earlier termination without further notice to Reseller.

(b) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Products to Reseller that are 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 and absolute discretion, that all sales and deliveries of the Products be made on either a cash-only or certified check basis.

(c) Subject to Section 14.06, on the expiration or earlier termination of this Agreement, Reseller shall promptly:

(i) return to Supplier the NFR Products;

(ii) 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 that Reseller is authorized by Supplier to sell the Products;

(iii) return to Supplier all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Supplier's Confidential Information;

(iv) permanently erase all of Supplier's Confidential Information from its computer systems; and

(v) certify in writing to Supplier that it has complied with the requirements of this Section 14.05.

(d) Subject to Section 14.05(a), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement.

**Section XIV.06 Post-term Resale Period.** Subject to Section 14.07, on the expiration or earlier termination of this Agreement, except for termination by Supplier under Section 14.03(a), Section 14.03(b), Section 14.03(c), Section 14.03(d) or Section 14.03(e), Reseller may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Products for a period of 6 months following the last day of the Term (the "*Post-term Resale Period*").

**Section XIV.07 Supplier's Buy-back Right.** Within 10 Business Days following the Term's expiration or earlier termination, Reseller shall Notify Supplier in writing of the description and quantity of all Products in Reseller's remaining inventory. In the Notice, the Reseller shall separately identify which of those Products Reseller is then contractually obligated to resell to one or more End Users ("*Committed Products*"). On or before the 30<sup>th</sup> Business Day after Supplier receives the Notice, Supplier may, in its sole discretion, offer to purchase all or a portion of any remaining inventory (other than Committed Products) free of all liens, claims, or encumbrances, at a price equal to the lesser of Reseller's cost therefor and Supplier's then

prevailing reseller price. Reseller must accept Supplier's offer and promptly deliver, at Reseller's expense and risk of loss, the ordered Products to Supplier's designated carrier for delivery to Supplier. Repurchased Products must be returned in their original packaging, unopened and undamaged. Supplier shall pay the repurchase price to Reseller either by:

- (a) the issuance of a credit against any indebtedness of Reseller to Supplier; or
- (b) if the repurchase price exceeds the indebtedness, by payment of the excess to Reseller within 10 Business Days after delivery to Supplier.

**Section XIV.08 End of Term Purchase Restrictions.** During the Term's last 3 months, Reseller shall purchase Products in quantities that are no greater than an amount that Reseller reasonably determines is necessary to meet End User demand in that period.

## **ARTICLE XV CONFIDENTIALITY**

**Section XV.01 Protection of Confidential Information.** From time to time during the Term, either Party (as "**Disclosing Party**") may disclose or make available to the other Party (as "**Receiving Party**") information about its business affairs, goods and services, forecasts, confidential information, and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information; such 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" constitutes "**Confidential Information**" hereunder. Confidential Information excludes information that, at the time of disclosure and as established by documentary evidence:

- (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this ARTICLE XV by Receiving Party or any of its Representatives;
- (b) is or becomes available to Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
- (c) was known by or in the possession of Receiving Party or its Representatives before being disclosed by or on behalf of Disclosing Party;
- (d) was or is independently developed by Receiving Party without reference to or use of, in whole or in part, any of Disclosing Party's Confidential Information; or
- (e) must be disclosed under applicable Law.

Receiving Party shall, during the Term and for five years after the termination of this Agreement, with respect to such Confidential Information:

(i) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(ii) not use 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

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

Receiving Party shall be responsible for any breach of this ARTICLE XV caused by any of its Representatives. The provisions of this ARTICLE XV shall survive termination or expiration of this Agreement for any reason for a period of one year after such termination or expiration. At any time during or after the Term, at Disclosing Party's written request, Receiving Party and its Representatives shall, under Section 14.05, promptly return all Confidential Information including copies that it has received under this Agreement.

In the event of any conflict between the terms and provisions of this ARTICLE XV and those of any other provision in this Agreement, the terms and provisions of this ARTICLE XV will prevail.

## **ARTICLE XVI REPRESENTATIONS AND WARRANTIES**

**Section XVI.01 Reseller's Representations and Warranties.** Reseller represents and warrants to Supplier that:

(a) it is a limited liability company duly organized, validly existing and in good standing in the jurisdiction of its formation;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(c) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

(d) the execution of this Agreement by its Representative whose signature is set out at the end hereof has been duly authorized by all necessary action of Reseller; and

(e) when executed and delivered by each of Supplier and Reseller, this Agreement will constitute the legal, valid and binding obligation of Reseller, enforceable against Reseller in accordance with its terms.

**Section XVI.02 Limited Product Warranty.** Subject to the provisions of Section 16.03, Section 16.04, Section 16.05 and Section 16.06, Supplier shall make certain limited warranties regarding the Products, except NFR Products, (“*Limited Warranties*”) solely to and for the End User’s benefit, which will either be:

- (a) included a written warranty statement with the Product; or
- (b) Supplier’s standard limited warranty in force when the Product is delivered by Reseller to End User.

No warranty is extended to Reseller under this Agreement. Reseller shall not provide any warranty regarding any Product other than the Supplier warranty described in this Section 16.02.

**Section XVI.03 Warranty Limitations.** Limited Warranties do not apply where the Product:

- (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Supplier;
- (b) has been reconstructed, repaired, or altered by Persons other than Supplier or its authorized Representative; or
- (c) has been used with any Third Party Product, hardware or product that has not been previously approved in writing by Supplier.

**Section XVI.04 Extent of Liability.** During the Warranty Period, regarding any Defective Goods:

- (a) notwithstanding anything in this Agreement to the contrary, Supplier’s liability under any Limited Warranty is discharged, in Supplier’s sole discretion and at its expense, by:
  - (i) repairing or replacing the Defective Goods; or
  - (ii) crediting or refunding the Price of the Defective Goods, less any applicable discounts, rebates, or credits.
- (b) Reseller is responsible for all costs and risk of loss associated with the delivery of Defective Goods to Supplier’ located at 4800 Dahlia Street, Suite D-10, Denver, CO 80216 (subject to change on receipt of Notice from Supplier) for warranty repair or replacement;

(c) Supplier is responsible for all costs and risk of loss associated with the delivery of repaired or replaced products to the Delivery Point; and

(d) Reseller is responsible for all costs and risk of loss associated with the delivery and return of the repaired or replaced Products to End User.

All claims for breach of a Limited Warranty must be received by Supplier no later than 10 Business Days prior to the expiration of the limited Warranty Period of the Product.

Reseller has no right to return for repair, replacement, credit, or refund any Product except as set out in this Section 16.04 (or if otherwise applicable, Section 9.04, Section 16.02, Section 16.04 and ARTICLE XVII). Reseller shall not reconstruct, repair, alter, or replace any Product, in whole or in part, either itself or by or through any third party.

THIS SECTION 16.04 SETS FORTH RESELLER'S SOLE REMEDY AND SUPPLIER'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO THE PRODUCTS.

Except as explicitly authorized in this Agreement or in a separate written agreement with Supplier, Reseller shall not service, repair, modify, alter, replace, reverse engineer, or otherwise change the Products it sells to End Users.

**Section XVI.05 Warranties Disclaimer; Non-reliance.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES DESCRIBED IN SECTION 16.01 AND SECTION 16.02, (A) NEITHER SUPPLIER NOR ANY PERSON ON SUPPLIER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; (iii) TITLE; (iv) NON-INFRINGEMENT; (v) PERFORMANCE OF PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND (B) RESELLER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SUPPLIER, OR ANY OTHER PERSON ON SUPPLIER'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 16.02 OF THIS AGREEMENT.

**Section XVI.06 Third Party Products.** Reseller acknowledges and agrees that Products purchased by Reseller under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with the products manufactured by a third party ("**Third Party Products**"). Third Party Products are not covered by the Limited Warranty. For the avoidance of doubt, Supplier makes no representations or warranties regarding any Third Party Products.

## ARTICLE XVII INDEMNIFICATION



**Section XVII.01 Reseller General Indemnification.** Subject to the terms and conditions of this Agreement, including those set out in Section 17.02, Reseller (as “**Reseller Indemnifying Party**”) shall indemnify, hold harmless, and defend Supplier and its parent, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors and permitted assigns (collectively, “**Supplier 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, incurred by Supplier Indemnified Party (collectively, “**Losses**”), arising out of or relating to any Claim of a third party:

- (a) relating to a breach or non-fulfillment of any representation, warranty, or covenant under this Agreement by Reseller Indemnifying Party or Reseller Indemnifying Party’s Personnel;
- (b) alleging or relating to any negligent or more culpable act or omission of Reseller Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (c) alleging or relating to any bodily injury, death of any Person or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Reseller Indemnifying Party or its Personnel;
- (d) relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Reseller Indemnifying Party and not directly relating to a claim of Limited Warranty breach;
- (e) relating to any failure by Reseller Indemnifying Party or its Personnel to comply with any applicable Laws; or
- (f) alleging that the Reseller Indemnifying Party breached its agreement with a third party as a result of or in connection with entering into, performing under or terminating this Agreement.

**Section XVII.02 Exceptions and Limitations on General Indemnification.** Notwithstanding anything to the contrary in this Agreement, Reseller Indemnifying Party is not obligated to indemnify or defend Supplier Indemnified Party against any claim (whether direct or indirect) if the claim or corresponding Losses arise out of or result from the Supplier Indemnified Party’s or its Personnel’s:

- (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct);
- (b) bad faith failure to materially comply with any of its material obligations set out in this Agreement; or

(c) use of the products purchased under this Agreement (including Products) in any manner not otherwise authorized under this Agreement.

**Section XVII.03 Supplier Intellectual Property Indemnification.** Subject to this ARTICLE XVII and ARTICLE XVIII, Supplier (as “*Supplier Indemnifying Party*”) shall indemnify Reseller and its officers, directors, employees, agents, Affiliates, successors, and permitted assigns (collectively, “*Reseller Indemnified Party*”) from and against all Losses awarded against any Reseller Indemnified Party in a final non-appealable judgment arising out of any Claim of a third party alleging that any of the Products or End User’s receipt or use thereof infringes any Intellectual Property Right of a third party arising under the Territory’s Laws.

If a Product, or any part of a Product, becomes, or in Supplier’s opinion is likely to become, subject to a third-party Claim that qualifies for intellectual property indemnification coverage under this Section 17.03, Supplier shall, at its sole option and expense, Notify Reseller in writing to cease using, reselling, marketing, advertising, or promoting all or a part of the Product, in which case Reseller shall immediately cease all use, resale, marketing, advertising and promoting the Product on receipt of Supplier’s Notice.

Reseller shall Notify Supplier of third-party Claims against Reseller and cooperate in the investigation, settlement, and defense of such Claims at its own expense.

Notwithstanding anything to the contrary in this Agreement, this Section 17.03 does not apply to any claim (whether direct or indirect) for which a sole or exclusive remedy is provided for under another section of this Agreement, including Section 9.04 and Section 16.04.

**Section XVII.04 Exceptions to Supplier’s Intellectual Property Indemnification.** Notwithstanding anything to the contrary in this Agreement, Supplier is not obligated to indemnify or defend Reseller Indemnified Parties against any claim (whether direct or indirect) under Section 17.03 if the claim or corresponding Losses arise out of or result from, in whole or in part,:

(a) the circumstances described in Section 17.02(a), Section 17.02(b), and Section 17.02(c);

(b) Reseller’s marketing, advertising, promotion, or sale of a product purchased under this Agreement (including any Product) in any manner not otherwise authorized under this Agreement;

(c) use of a product purchased under this Agreement (including any Product) in combination with any products, materials, or equipment supplied to the End User by a Person other than Supplier, Reseller, or either of their authorized Representatives, if the infringement would have been avoided by the use of the products not so combined; or

(d) any modifications or changes made to the product by or on behalf of any Person other than Supplier or its Representatives, if the infringement would have been avoided without the modification or change.

**Section XVII.05 Sole Remedy.** ARTICLE XVII SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR RESELLER INDEMNIFIED PARTY FOR ANY LOSSES COVERED BY ARTICLE XVII.

## **ARTICLE XVIII LIMITATION OF LIABILITY**

**Section XVIII.01 No Liability for Consequential or Indirect Damages.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT IS SUPPLIER OR THEIR REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**Section XVIII.02 Maximum Liability for Damages.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL SUPPLIER'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 UNDER THIS AGREEMENT IN THE 3 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF THE RESELLER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

## **ARTICLE XIX INSURANCE**

**Section XIX.01 Insurance Obligations.** During the Term and for a period of 6 months thereafter, Reseller Indemnifying Party shall, at its own expense, maintain, and carry in full force and effect commercial general liability (including product liability) in a sum no less than \$1,000,000 in the aggregate with financially sound and reputable insurers. On a Party's request, the other Party shall provide the requesting Party with a certificate of insurance from the insured Party's insurer evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Supplier as an additional insured. Reseller shall provide Supplier with 14 Business Days' advance Notice in the event of a cancellation or material change in its insurance

policy. Except where prohibited by Law, Reseller shall require its insurer to waive all rights of subrogation against Supplier and its insurers.

**Section XIX.02 Supplier Insurance Obligations.** During the Term, Supplier shall maintain insurance coverage or self-insure at levels appropriate to meet the indemnification obligations assumed under this Agreement. On request of Reseller, Supplier shall provide evidence of its insurance or self-insurance.

## **ARTICLE XX MISCELLANEOUS**

**Section XX.01 Further Assurances.** On Supplier's' reasonable request, Reseller shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

**Section XX.02 Entire Agreement.**

(a) Subject to ARTICLE IV, this Agreement, including and together with related exhibits, schedules, attachments, and appendices, together with the online Purchase Order, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

(b) Without limitation of anything contained in Section 20.02(a), each Party acknowledges that except for the representations and warranties contained in Section 16.01, or Section 16.02, neither Party nor any other Person has relied on any other express or implied representation or warranty, either written or oral, on behalf of the Party, including any representation or warranty arising from statute or otherwise in Law.

**Section XX.03 Survival; Limitation of Actions.** Subject to the limitations and other provisions of this Agreement:

(a) the representations and warranties of the Parties contained herein, and related exceptions, limitations, or qualifiers survive the expiration or earlier termination of this Agreement for a period of 12 months after the expiration or termination; and

(b) Section 15.01 of this Agreement, as well as any other provision that, to give proper effect to its intent, should survive such expiration or termination, survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of 12 months after expiration or termination.

Notwithstanding any right under any applicable statute of limitations to bring a claim, no lawsuit or other action based on or arising in any way out of this Agreement may be brought by either Party after the applicable survival period's expiration; provided, however, that the foregoing limitation does not apply to the collection of any amounts due to Supplier under the Agreement; and provided, further, that any claims asserted in good faith with reasonable specificity and in

writing by Notice before the applicable survival period's expiration is not thereafter barred by the relevant period's expiration, and these claims survive until finally resolved.

**Section XX.04 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**" and with the correlative meaning, "**Notify**") must be in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Notwithstanding the foregoing, Notice given by facsimile or email (with confirmation of transmission) satisfies the requirements of this Section 20.04. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Supplier:

4325 N Harlan St, Wheat Ridge, CO 80033  
Email: info@clovehill.com  
Attention: Jessica Gremley & Michael Gremley

**Section XX.05 Interpretation.** For purposes of this Agreement: (a) the words "include," "includes", and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto", and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means the agreement, instrument, or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means the statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

**Section XX.06 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section XX.07 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not

affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction; *provided, however*, that if any fundamental term or provision of this Agreement (including Section 16.01), is invalid, illegal, or unenforceable, the remainder of this Agreement is unenforceable. On a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section XX.08 Amendment and Modification.** No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized Representative of each Party.

**Section XX.09 Waiver.**

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the Party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission, or course of dealing between the Parties.

**Section XX.10 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Reseller's rights under Section 9.03, Section 9.04, Section 16.04 and each of the Parties' rights under ARTICLE XVII are Reseller's exclusive remedies for the events specified therein.

**Section XX.11 Equitable Remedies.** Reseller acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under ARTICLE XV would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Reseller of any of these obligations, Supplier shall, in addition to any and all other rights and remedies that may be available to Supplier at law, at equity, or otherwise in respect of this breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary

damages do not afford an adequate remedy. Reseller agrees that it will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 20.11.

**Section XX.12 Assignment.** Reseller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supplier. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement. Supplier may assign any of its rights or delegate any of its obligations without the consent of Reseller.

**Section XX.13 Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

**Section XX.14 No Third-Party Beneficiaries.**

(a) Except as set out in Section 20.14(b), this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(b) The Parties hereby designate the Supplier's parents, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors, and permitted assigns as third-party beneficiaries of ARTICLE XVII of this Agreement having the right to enforce ARTICLE XVII.

**Section XX.15 Choice of Law.** This Agreement, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the Laws of the State of Colorado, US, without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the Laws of any jurisdiction other than those of the State of Colorado. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**Section XX.16 Choice of Forum.** Each Party irrevocably and unconditionally 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, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the First Judicial District of Colorado or, if this court does not have subject matter jurisdiction, the courts of the State of Colorado sitting in Jefferson County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of these courts and agrees to bring any action, litigation, or proceeding only in the First Judicial District of Colorado or, if this court does not have subject matter jurisdiction, the courts of the State of Colorado sitting in Jefferson County. Each Party agrees that a final judgment in any 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.

**Section XX.17 Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly, or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) it has considered the implications of this waiver, (c) it makes this waiver voluntarily, and (d) it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

**Section XX.18 Dispute Resolution.** In the event of dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, “*Dispute*”), the Party seeking to settle the Dispute shall deliver Notice (each, a “*Dispute Notice*”) of the dispute to the other Party as follows:

The Reseller shall send the Dispute Notice to Supplier in accordance with Section 20.04 (or to another person of equivalent or superior position designated by Supplier in a Notice to Reseller).

The Supplier shall send the Dispute Notice to Reseller in accordance with Section 20.04 (or to another person of equivalent or superior position designated by Reseller in a Notice to Supplier).

The Parties agree that prior to any court action, they shall be required to negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve any Dispute within 30 Business Days after the applicable Dispute Notice’s delivery, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 20.16 and Section 20.17.

**Section XX.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. Notwithstanding anything to the contrary in Section 20.04, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending the facsimile, email, or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic email reply).

**Section XX.20 Force Majeure.** No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the Reseller to make payments to Supplier hereunder), when and to the extent such failure or delay is caused



by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 8 days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following written notice given by it under this Section 20.20, either Party may thereafter terminate this Agreement upon 14 days' written notice.

**Section XX.21 No Public Announcements or Trademark Use.** Unless expressly permitted under this Agreement, Reseller shall not:

(a) make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding Supplier or its business unless:

- (i) it has received the express written consent of Supplier, or
- (ii) it must do so by Law; or

(b) use Supplier's Trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of Supplier.

## **SCHEDULE 1 - PRODUCT LIST**

1. Include manufacturer's suggested retail price pursuant to Section 11.02.
2. The following Products are approved for resale in online or web-based environments when home care is being managed by a Clove Hill Certified Skin Care Professional, as described below:
  - a. Products which contain: Vitamin A, benzoyl peroxide, glycolic acid, mandelic acid or any other alpha or beta hydroxy acids unless specified below.
  - b. Serums: Mandelic Serum 5%/8%/11%/15%, Vitamin A Serum I/Vitamin A Serum II
  - c. Acne Gel: Acne Gel 2.8%/5%/10%
  - d. Cleansers: Clarifying Cleanser 2.5%
  - e. Toners: Exfoliating Toner
3. Managed home care requires, at minimum, the following steps:
  - a. initial consultation;
  - b. continued review of client status; and
  - c. ongoing assessments may be completed in person or via virtual tools.

## **SCHEDULE 2 - TRADEMARK LIST**

1. “Clove Hill” bearing the registration number 5179837.

### **SCHEDULE 3 - TERRITORY**

1. “***Territory***” means all United States and foreign markets; *provided, however*, that for the purposes of online sales, Territory shall not include the Denver and Jefferson counties in the State of Colorado.

## **EXHIBIT A - TRAINING DETAILS**

1. Subject to Section 5.01(a), Reseller and Reseller Personnel shall complete the following training:
  - a. Online Training Modules on herbal supplement ingredients
  - b. Nutrition and Acne
  - c. Hormones and Acne