

## PRODUCT RESELLER AGREEMENT

This PRODUCT RESELLER AGREEMENT (the “**Agreement**”), effective as of the last date set forth on the signature page(s) to this Agreement, is entered into by and between Biomics LLC dba Kalyagen, a Texas limited liability company having its principal place of business at 1205 Sheldon Cove, Austin TX 78753 (“**Supplier**”), and the following company (“**Reseller**”):

**Reseller’s Legal Name:** \_\_\_\_\_

**Reseller’s Address:** \_\_\_\_\_

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

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

**WHEREAS**, Reseller is a licensed healthcare provider which is also in the business of marketing and reselling products that are similar in kind and quality to the Products;

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

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

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

### 1. **Definitions**

Capitalized terms have the meanings set out in this Section 1, 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.

“**Claim**” means any Action made or brought against a person (or entity) entitled to indemnification under Section 11.

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

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

“**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.

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

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

“**Notice**” has the meaning set out in Section 13.4.

“**Notify**” means to give Notice.

“**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).

“**Personnel**” means agents, employees, or subcontractors engaged or appointed by Supplier or Reseller (provided that, for the avoidance of doubt, Reseller shall not be considered Personnel of Supplier), as applicable.

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

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

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

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

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

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

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

2.1. **Non-Exclusive Appointment.** Supplier hereby appoints Reseller, and Reseller accepts the appointment, to act as a non-exclusive reseller of Products to End Users during the Term of this Agreement, solely in accordance with the terms and conditions of this Agreement.

2.2. **Status as an Independent Contractor.** The relationship between Supplier and Reseller is solely that of vendor and vendee. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment or fiduciary relationship between the Parties or an employee/employer relationship. Reseller is an independent contractor under this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

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

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

3.1. **No Franchise or Business Opportunity Agreement.** The Parties acknowledge and agree that this Agreement is not a franchise or business opportunity agreement and does not create a franchise or business opportunity relationship between the Parties. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the Parties, then Supplier shall have the sole discretion to immediately terminate this Agreement or negotiate with Reseller in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a reseller agreement and not a franchise or business opportunity agreement.

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

4.1. **Terms of Agreement Prevail Over Reseller's Purchase Order.** This Agreement is expressly limited to the terms of this Agreement and any Purchase Order Transaction Terms contained in the applicable purchase order. The terms of this Agreement shall prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement, and expressly exclude any of Reseller's general terms and conditions contained in Reseller's form of purchase order or any other document issued by Reseller. As used herein, "**Purchase Order Transaction Terms**" are limited to the following information specified in the applicable purchase order: (a) list of Products to be purchased; (b) quantities ordered; (c) requested delivery date; and (d) delivery location.

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

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

5.1.1. Know and abide by all Laws applicable to this Agreement, the Products (and the resale thereof) and the operation of its business, including, without limitation, all Laws pertaining to dietary supplement labeling (GMO, California Prop. 65, age-restrictions, etc.), marketing, and regulations specific to individual ingredients for each product.

5.1.2. Observe all directions and instructions given to it by Supplier in relation to the marketing, advertisement and promotion of the Products, including Supplier's sales, marketing, and merchandising policies as they currently exist or as they may hereafter be changed by Supplier, to the extent that these marketing materials, advertisements, or promotions refer to the Products or otherwise use Supplier's Trademarks.

5.1.3. In any and all contact between Reseller and any End User, Reseller must identify to the End User Reseller's full legal name, trade name, or both.

5.1.4. Market, advertise, promote, and resell Products and conduct business in a manner consistent with good business practice and that reflects favorably at all times on Products and the good name, goodwill, and reputation of Supplier.

5.1.5. 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.

5.1.6. Have sufficient knowledge of the industry so as to be able to explain in detail information on standard protocols and features of each Product to the End Users.

5.1.7. Promptly Notify Supplier of (and address and investigate, if appropriate) any complaint or adverse claim about any Product or its use of which Reseller becomes aware, provided that nothing in this Agreement requires Reseller to reveal proprietary pricing information.

5.1.8. Upon reasonable request by Supplier, provide Supplier with a current and accurate list of all of its selling locations or outlets.

5.1.9. Report to Supplier the URL of all websites where Reseller sells Products. All such websites must explicitly identify the Reseller's full legal name, trade name, or both.

5.1.10. Comply with the Company's terms of service (including any privacy policies) posted from time to time on the Company's website or delivered with the Company's Products.

5.2. **Reporting and Recordkeeping.** Reseller shall, in good faith and at its own expense:

5.2.1. Within three (3) days after the reasonable request of Supplier, which request shall only be made in the event Supplier has a good-faith belief that Reseller has engaged or is engaging in conduct prohibited by Section 5.5 of the Agreement, submit to Supplier complete and accurate reports of inventory and sales of Products in a computer-readable format acceptable to Supplier.

5.2.2. Maintain books, records, and accounts of all transactions and activities covered by this Agreement, and permit review of such books, records, and accounts by Supplier and its Representatives upon reasonable request, which request shall only be made in the event Supplier has a good-faith belief that Reseller has engaged or is engaging in conduct prohibited by Section 5.5 of this Agreement.

5.2.3. At the beginning of the Term, and at any other time throughout the Term upon the request of the Company, provide Supplier with copies of Reseller's current and unrestricted license(s) and/or certification(s) to provide healthcare or health coaching services of the type which Reseller is qualified and licensed or certified to provide, as well as evidence reasonably satisfactory to the Company that Reseller is actively engaged in the provision of such services to a client base; and Reseller shall maintain such licenses, certificates an active practice throughout the entirety of the Term.

5.3. **Authority to Perform Under this Agreement.** Reseller shall, at its own expense, obtain and maintain required certifications, credentials, licenses, and permits necessary to conduct business in accordance with this Agreement and resell the Products.

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

5.4.1. Immediately take whatever steps may be necessary to properly notify, register, or obtain appropriate approval.

5.4.2. Be responsible for any charges incurred in connection with notifying, registering, or obtaining such approval(s).

5.4.3. Keep Supplier informed of its efforts regarding this Section 5.4.

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

5.5.1. Make any representations, warranties, guarantees, indemnities, similar claims, or other commitments (a) actually, apparently, or ostensibly on behalf of Supplier; or (b) to any End User regarding the Products or Supplier which representations, warranties, guarantees, indemnities, similar claims or other commitments are in addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Supplier to Reseller.

5.5.2. Engage in any unfair, competitive, misleading, or deceptive practices regarding Supplier, Supplier's Trademarks, or the Products, including any product disparagement or "bait-and-switch" practices, or fail to comply with any applicable Laws applicable to the resale of the Products or the operation of Reseller's business.

5.5.3. Sell, either directly or indirectly, or assign or transfer in any way, any Products to any person (or entity) when Reseller knows or has reason to suspect that the person (or entity) may resell any or all of the Products to a third party, including any third-party reseller or distributor.

5.5.4. Sell Products to any person in quantities or unit volumes which are inappropriate for individual use.

5.5.5. Sell Products via any third-party-facilitated online retail or online auction website (including, but not limited to: amazon.com, ebay.com, bonanza.com, wish.com, best-price.com, vitaheals.com, or any other online retail or online auction websites which sell products similar in character to Products). **Supplier and Reseller acknowledge and agree that this prohibition is necessary to ensure patient/consumer safety and the integrity of the Products.** Notwithstanding the foregoing, Reseller shall be permitted to sell individual unit-volumes of its Products on its own direct website, provided that it has an established practitioner-patient relationship providing healthcare to the person to whom it sells such Products. Supplier reserves the right to prohibit sales of the Products on Reseller's own direct website, at any time, upon written Notice to Reseller.

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

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

5.5.8. Manufacture, promote, market, sell, or distribute Products using promotional information and material, unless the promotional information or material was provided by Supplier for that specific purpose.

5.5.9. Use Supplier's name, logo, name of the Products, or other information linking to Supplier or the Products to market, advertise, or sell the Products other than identifying the Products with the actual name of the Products on Reseller's own direct website. Prohibited acts include, but are not limited to, using the Supplier's name or logo on the Reseller's website, creating a website to appear as if it is an official, authorized website of the Supplier, or driving traffic to the Reseller's own direct website by the use of the Supplier's name or the name of the Products in metatags or through other search engine optimizing methods.

5.5.10. Identify, list or post any product prices on the internet without the Company's prior written approval.

5.5.11. Purchase "STEMREGEN" or the name of any of the products as Google AdWords, nor any other online advertising platform or service, including, but not limited to, Facebook, Yahoo Shopping, Amazon ads, Twitter, Instagram, Pinterest, and the like.

5.6. **Supplier's Right to Discontinue Sales.** Notwithstanding anything to the contrary in this Agreement, Supplier reserves the right to temporarily or permanently discontinue sales of the Products to any Reseller suspected of engaging in any Prohibited Acts described in Section 5.5 or Section 9.3, at Supplier's sole discretion, and to permanently discontinue sales of the Products to Reseller in the event Reseller engages in any Prohibited Acts enumerated in Section 5.5 or Section 9.3 or the enumerated subsections of Section 5.5 or Section 9.3.

## 6. **Minimum Advertised Price**

6.1. **Reseller Agreement / Minimum Advertised Price.** Supplier currently has a Minimum Advertised Price ("MAP") policy that is issued separately from this Agreement and may be changed from time to time at the sole discretion of the Supplier. Supplier reserves the right to terminate this Agreement unilaterally at any time for violation of its MAP policy by giving written Notice to Reseller. Reseller's agreement with Supplier's MAP policy is not solicited nor will it be accepted as a condition of this Agreement. Upon the occurrence of a violation of Supplier's MAP policy, this Agreement will be terminated as of the written Notice as there is no right of cure for any violation of Supplier's MAP policy, notwithstanding anything to the contrary set forth elsewhere in this Agreement.

## 7. **Term**

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

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

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

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

7.2.3. If Reseller breaches any provision of this Agreement (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Reseller within ten (10) days after Reseller's receipt of written Notice of the breach. The Parties agree that breaches of Section 5.5 and Section 9.3 cannot be cured;

7.2.4. If Reseller sells, leases, exchanges, transfers, or disposes of a material portion of Reseller’s assets; merges or consolidates with or into any other entity, unless the Reseller has provided prior written notice of such event (which notice includes the identity of the other entity) and has certified in writing to Supplier that the surviving entity has a net worth greater than or equal to Reseller’s net worth immediately before the merger or consolidation and is not a competitor of Supplier; or undergoes a change of control; in each case without Supplier’s prior written consent;

7.2.5. If Reseller violates Supplier's MAP policy as set forth Section 6.1 above; or

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

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

7.3. **Right to Terminate Without Cause.** Either Party may terminate this Agreement (a) under and in accordance with Section 3.1 and Section 13.14, or (b) without cause, for any or no reason, by providing written Notice to the other Party at least ninety (90) days prior to the proposed termination date.

7.4. **Effect of Termination.**

7.4.1. The termination of the Term does not affect any rights or obligations that were incurred by the Parties prior to the termination or that are to survive the termination of this Agreement under Section 13.3. Upon termination, all indebtedness of Reseller to Supplier of any kind is immediately due and payable on the effective date of the Term's termination without further Notice to Reseller. Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Products to Reseller scheduled to be made after the effective date of termination, whether or not any orders for the Products had been accepted by Supplier. Regarding any Products that are still in transit on termination of this Agreement,

Supplier may require, in its sole discretion, that all sales and deliveries of the Products be made on either a cash-only or certified check basis.

7.4.2. Immediately upon the termination of the Term, Reseller shall (a) cease to represent itself as Supplier's authorized reseller regarding the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe Reseller is authorized by Supplier to sell the Products; (b) return to Supplier any Supplier-branded marketing and/or advertising materials; and (c) comply with Section 8.2.5.

7.5. **Post-Termination Resale Period.** Subject to Section 7.6 and notwithstanding Section 7.4.2 above, upon termination of this Agreement (except for termination by Supplier pursuant to any provision set forth in Section 7.2.1 through Section 7.2.5), Reseller may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Products for a period of ninety (90) days following the last day of the Term.

7.6. **Supplier's Buy-back Right.** Within ten (10) Business Days following the Term's expiration or earlier termination, Reseller shall Notify Supplier in writing of the description, UPC/SKU or other product identifier 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 fifteen (15<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 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 (provided, however, that if the Agreement is terminated by Supplier pursuant to Section 7.3, such delivery shall be at Supplier'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 thirty (30) Business Days after delivery to Supplier.

## **8. Confidentiality**

8.1. **Protection of Confidential Information.** From time to time during the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, goods and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure:

8.1.1. Is or becomes generally available to and known by the public other than resulting from, directly or indirectly, any breach of this Section 8.1 by the Receiving Party or any of its Representatives; or

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

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

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

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

8.2.3. Not disclose any Confidential Information to any Person, except (a) to the Receiving Party's Representatives who must know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement, or (b) to the extent any portion of the Confidential Information must be disclosed under applicable Law (in which case the Disclosing Party shall use commercially reasonable efforts to assure such disclosed information is treated as confidential by the recipient and shall only disclose such portion as is required to be disclosed.

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

8.2.5. Promptly return or destroy all Confidential Information (including copies) and all documents and tangible materials that contain, reflect, incorporate or are based on Confidential Information received under this Agreement, immediately upon termination of the Term or upon the earlier request of the Disclosing Party, and certify in writing that Reseller has complied with the requirements of this Section 8.2.5.

8.3. **Survival.** The provisions of this Section 8 shall survive termination or expiration of this Agreement for any reason for a period of five (5) years after such termination.

## 9. **Intellectual Property Rights**

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

9.1.1. Supplier's Intellectual Property Rights are the sole and exclusive property of Supplier or its licensors;

9.1.2. Reseller shall not acquire any ownership interest in any of Supplier's Intellectual Property Rights under this Agreement;

9.1.3. Any goodwill derived from the use by Reseller of Supplier's Intellectual Property Rights inures to the benefit of Supplier or its licensors, as the case may be;

9.1.4. If Reseller acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Supplier or its licensors, as the case may be, without further action by either Party;

9.1.5. Reseller shall use Supplier's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Supplier; and

9.1.6. Reseller shall not service, repair, modify, alter, replace, reverse engineer, or otherwise change the Products it sells to End Users.

**9.2. Supplier's Trademark License Grant.** This Agreement does not grant either Party the right to use the other Party's or their affiliates' Trademarks except as set out under this Section 9.2. Subject to Supplier's trademark policies as may be posted on Supplier's website or delivered to Reseller from time to time by Supplier, Supplier hereby grants to Reseller a revocable, non-exclusive, non-transferable and non-sublicensable license to use Supplier's Trademarks during the Term solely on or in connection with the promotion, advertising and resale of the Products in strict accordance with the terms and conditions of this Agreement. Reseller will discontinue the display or use of any Trademark, or change the manner in which a Trademark is displayed or used with regard to the Products, promptly when (but in no event later than five (5) days after) requested by Supplier. Other than the express licenses granted by this Agreement, Supplier grants no right or license to Reseller, by implication, estoppel or otherwise, to the Products or any Intellectual Property Rights of Supplier. Reseller agrees to use the symbols <sup>TM</sup> and <sup>©</sup>, as appropriate, when displaying Supplier's Trademarks, to indicate Supplier's ownership of the Trademarks; use of such symbols shall not be construed as claims to ownership by the Reseller. Reseller's use of Supplier's Trademarks must be accompanied by a statement substantially as follows: "[*INSERT NAMES OF TRADEMARKS*] are trademarks of Kalyagen and are used with permission." Reseller's website must also include, on all pages that reflect Products, a statement substantially as follows: "This site is not owned or operated by Kalyagen."

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

9.3.1. 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;

9.3.2. Challenge any right, title or interest of Supplier in or to Supplier's Intellectual Property Rights;

9.3.3. Make any claim or take any action adverse to Supplier's ownership of Supplier's Intellectual Property Rights;

9.3.4. Register or apply for registrations, anywhere in the world, for Supplier's Trademarks or any other Trademark that is similar to any of Supplier's Trademarks or that incorporates Supplier's Trademarks in whole or in confusingly similar part;

9.3.5. Use any mark, anywhere, that is confusingly similar to Supplier's Trademarks;

9.3.6. Engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Supplier Trademark;

9.3.7. Misappropriate any of Supplier's Trademarks for use as a domain name without prior written consent from Supplier; or

9.3.8. Alter, obscure or remove any of Supplier's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on Products or any marketing materials or other materials that Supplier may provide to Reseller.

9.4. **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.

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

9.5.1. Reseller's rights under Section 9.2 cease immediately; and

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

## **10. Shipping; Price and Payment**

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

10.2. **Shipping Charges, Insurance and Taxes.** Unless otherwise indicated on a purchase order, Supplier shall cover shipping charges and shipping insurance costs for the Products for orders above \$500.00 USD. 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 other charges, costs and taxes; provided, however, that, Reseller is not responsible for any taxes imposed on, or regarding, Supplier's income, revenues, gross receipts, Personnel or real or personal property or other assets.

10.3. **Payment Terms.** Supplier may issue invoices to Reseller for all Products ordered in accordance with Supplier's standard practices in place from time to time. All amounts due to Supplier for Products ordered by Reseller shall be due and paid in full by Reseller prior to shipment of the Products. Reseller shall make all payments in US dollars, by check or wire transfer; wire transfer instructions will be provided by Supplier to Reseller upon request. Supplier reserves the right to add a fee of 3% to invoices for all payments made by credit card.

10.4. **Invoice Disputes.** Reseller shall Notify Supplier in writing of any dispute with any invoice (along with substantiating documentation or a reasonably detailed dispute description) within seven (7) Business Days from the date of the invoice. Reseller will be deemed to have accepted all invoices for which Supplier does not receive timely Notice of disputes, and shall pay all undisputed amounts due under these invoices within the period set out above. The Parties shall seek to resolve all disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Reseller shall continue performing its obligations under this Agreement during any dispute, including, without limitation, Reseller's obligation to pay all due and undisputed invoice amounts in accordance with the terms and conditions of this Agreement.

10.5. **No Set-off Right.** Reseller shall not, and acknowledges that it has no right, under this Agreement, any Purchase Order, any other agreement, document or Law, to, withhold, offset, recoup or debit any amounts owed (or become due and owing) to Supplier or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed or to become due and owing to it by Supplier or Supplier's affiliates, whether relating to Supplier's or its affiliates' breach or non-performance of this Agreement, any Purchase Order, or any other agreement between Reseller or any of its affiliates.

10.6. **Defective Products.** Reseller shall inspect the Products with respect to quantity, appearance and visible defects or damage upon delivery. If any Products are received by Reseller in a defective condition or in material excess of the quantity reflected on the applicable purchase order, Reseller must Notify Supplier of any such defects within ten (10) days following the delivery date with respect to visible defects, or ten (10) days following discovery with respect to latent defects not visible upon receipt of delivery, and such Notice must include a detailed description and sufficient evidence establishing that the Product is in fact defective. Upon receipt of any such notice, Supplier will, at its option, replace the defective Products or credit or refund the purchase price of the defective products (less any applicable discounts, rebates or credits). Supplier's obligations under this Section 10.6 shall 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.

THIS SECTION 10.6 SETS FORTH RESELLER'S SOLE REMEDY AND SUPPLIER'S SOLE LIABILITY WITH RESPECT TO ANY DAMAGED OR DEFECTIVE PRODUCTS.

## **11. Indemnification.**

11.1. **Reseller Indemnification.** Subject to Section 11.3 below, Reseller (as "**Reseller Indemnifying Party**") shall indemnify, hold harmless, and defend Supplier and its parent, subsidiaries, officers, directors, managers, partners, members, shareholders, employees, agents, representatives, 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 or fines, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, "**Losses**"), incurred by

any Supplier Indemnified Party and arising out of or relating to any Claim of a third party alleging or relating to:

11.1.1. a material breach or non-fulfillment of any representation, warranty, covenants or obligation under this Agreement by Reseller or Reseller's Personnel;

11.1.2. any grossly negligent or more culpable act or omission of Reseller or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;

11.1.3. 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 or its Personnel;

11.1.4. the purchase of a Product by any person or entity purchasing directly or indirectly through Reseller; or

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

11.2. **Supplier Indemnification.** Subject to Section 11.3 below, Supplier (as "**Supplier Indemnifying Party**") shall indemnify, hold harmless, and defend Reseller and its parent, subsidiaries, officers, directors, managers, partners, members, shareholders, employees, agents, representatives, affiliates, successors and permitted assigns (collectively, "**Reseller Indemnified Party**") against any and all Losses incurred by any Reseller Indemnified Party and arising out of or relating to any Claim of a third party alleging or relating to:

11.2.1. any grossly negligent or more culpable act or omission of Supplier or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement or the Products;

11.2.2. 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 Supplier or its Personnel; or

11.2.3. any failure by Supplier or its Personnel to comply with any applicable Laws.

Notwithstanding anything to the contrary in this Agreement, this Section 11.2 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.

11.3. **Exceptions and Limitations on General Indemnification.** Notwithstanding anything to the contrary in this Agreement, no Indemnifying Party is or shall be obligated to indemnify or defend an Indemnified Party against any claim (whether direct or indirect) to the extent the claim or corresponding Losses arise out of or result from:

11.3.1. the Indemnified Party's or its Personnel's gross negligence or more culpable act or omission (including recklessness or willful misconduct), or bad faith failure to materially comply with any of its material obligations set out in this Agreement; or

11.3.2. the use of the products purchased under this Agreement (including Products) in any manner not otherwise authorized under this Agreement or that does not materially conform with the then-current usage instructions, guidelines or specifications provided by Supplier.

11.4. **Sole Remedy.** This Section 11 sets forth the entire liability and obligation of each Indemnifying Party and the sole and exclusive remedy for each Indemnified Party for any Losses covered by this Section 11.

## **12. Warranty Disclaimer; Limitation of Liability**

12.1. **Warranty Disclaimer.** EXCEPT FOR ANY WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SUPPLIER, ITS AFFILIATES, NOR ANY PERSON ON ITS OR ITS AFFILIATES' BEHALF HAS MADE OR MAKES FOR RESELLER'S OR ANY END USER'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; (iii) PERFORMANCE (iv) TITLE; OR (v) NON-INFRINGEMENT; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. RESELLER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SUPPLIER, OR ANY OTHER PERSON ON SUPPLIER'S BEHALF. FOR THE AVOIDANCE OF DOUBT, SUPPLIER SPECIFICALLY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ANY PRODUCTS PREPARED OR MANUFACTURED BY A THIRD PARTY THAT MAY CONTAIN, BE CONTAINED OR INCORPORATED INTO, ATTACHED TO, OR PACKAGED WITH THE PRODUCTS, AND SUCH THIRD PARTY PRODUCTS ARE NO INCLUDED IN ANY WARRANTIES MADE BY SUPPLIER.

12.2. **No Liability for Consequential or Indirect Damages.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR LOSSES RELATED TO A PARTY'S OR ITS PERSONNEL'S GROSS NEGLIGENCE OR MORE CULPABLE ACT OR OMISSION, IN NO EVENT IS EITHER PARTY OR THEIR REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (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.

12.3. **Maximum Liability for Damages.** EXCEPT FOR LIABILITY FOR LOSSES RELATED TO SUPPLIER OR ITS PERSONNEL'S GROSS NEGLIGENCE OR MORE CULPABLE ACT OR OMISSION, IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY FOR EACH CLAIM 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 TO SUPPLIER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF THE SUPPLIER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

### **13. Miscellaneous**

13.1. **Further Assurances.** On a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all further documents and instruments, and take all further acts, reasonably necessary to give full effect to this Agreement.

13.2. **Entire Agreement.** This Agreement, including and together with any Purchase Order Transaction Terms and any related exhibits, schedules, attachments and appendices, constitutes the Parties' sole and entire agreement regarding the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding this subject matter.

13.3. **Survival; Limitation of Actions.** Subject to the limitations and other provisions of this Agreement: Sections 4, 7.4 through 7.6, 8, 9, 11 and 12 of this Agreement, as well as any other provision that, to give proper effect to its intent, should survive such expiration or termination of this Agreement, shall survive the expiration or earlier termination of this Agreement. 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.

13.4. **Notices.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other Party at its address set forth above. Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Notice given by facsimile or e-mail (with confirmation of transmission) satisfies the requirements of this Section 13.4.

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

13.6. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in any other jurisdiction; provided, however, that if any fundamental term or provision of this Agreement 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 effectuate the Parties' original

intent as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.7. **Amendment and Modification.** Supplier may modify or amend this Agreement from time to time as deemed necessary. Such amendments by Supplier are effective if signed in writing by an authorized representative of Reseller or by electronic signature or another means of electronic affirmative verification (e.g. checked box or click acknowledgement). Reseller may not modify or amend this Agreement.

13.8. **Waiver.** 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. 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. The following shall not constitute a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement: any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or any act, omission or course of dealing between the Parties.

13.9. **Cumulative Remedies.** Except where another section of this Agreements provides for a sole or exclusive remedy, 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.

13.10. **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 13.10 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.

13.11. **Successors and Assigns; Third Party Beneficiaries.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns. Except for any Indemnified Party as set forth in Section 11, which persons (or entities) are hereby expressly designated as third party beneficiaries of Section 11 of this Agreement having the right to enforce Section 11, nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13.12. **Choice of Law; Choice of Forum.**

13.12.1. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, are governed by, and construed in accordance with, the Laws of the State of Texas, 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 Texas.

13.12.2. 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 and the transactions contemplated

hereunder in any forum other than the U.S. District Court for the Western District of Texas or the courts of the State of Texas sitting in Austin, Texas. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of these courts and agrees to bring any action, litigation, or proceeding only in such courts. 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.

13.13. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (including .pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

13.14. **Force Majeure.** No Party shall be liable or responsible to the other Party, nor 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 Reseller to make payments under this Agreement), when and to the extent the 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 Events**"): (a) acts of God; (b) flood, fire, earthquake, explosion or pandemics/epidemics; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) requirements of Law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give Notice within fifteen (15) 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 the 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 thirty (30) days following written Notice given by it under this Section 13.14, either Party may thereafter terminate this Agreement on fifteen (15) days' written Notice.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** this Product Reseller Agreement has been executed by the Parties as of the Effective Date.

**BIOMICS, LLC DBA KALYAGEN**

By: \_\_\_\_\_

Name: Christian Drapeau

Title: President / CEO

**RESELLER:** \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: