

## PERQUE'S PRODUCT DISTRIBUTION AGREEMENT

This PERQUE's Product Distribution Policy ("Policy") applies to all Authorized Resellers ("Resellers") of PERQUE, LLC dba PERQUE Integrative Health ("PERQUE") products ("Products"). The Policy is effective immediately. By purchasing Products from PERQUE for retail sale, you ("Reseller") agree to adhere to the following terms and conditions.

### RECITALS

WHEREAS, PERQUE is a producer and wholesale provider of professional natural health products marked under the registered PERQUE trademark(s) ("Products") which Products may be sold only to physicians and licensed health care professionals under the terms and conditions of this Agreement;

WHEREAS, Reseller agrees to provide the Products only to patients that it is currently counseling nutritionally, as medically indicated and not to the general public; and

WHEREAS, PERQUE has developed a minimum advertised price policy ("MAP Policy") to protect its reputation, and the reputation and quality of its Products as Internet sales of its Products have increased.

For good and valuable consideration, the sufficiency and receipt of which is acknowledged, PERQUE and Reseller agree as follows:

### 1. APPOINTMENT AND RELTIONSHIP OF PARTIES

Subject to the terms and conditions set forth herein, PERQUE hereby appoints Reseller as PERQUE's independent, authorized, non-exclusive reseller of the Products anywhere in the world during the term of this Agreement, and Reseller hereby accepts such appointment. The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall create or be construed to create any partnership, joint venture, agency, franchise, sales representative, employment or fiduciary relationship between the parties. Neither party shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

### 2. DISTRIBUTION LIMITATIONS

(a) Reseller shall only sell and/or distribute the Products to end-user consumers, as medically indicated, that are under the personal care of Reseller (hereinafter "End-Users"). Reseller shall also promote, market or advertise the Products exclusively to End-Users as long as PERQUE pre-approves in writing such actions to be taken by the Reseller, and approves in writing all materials to be used in connection with such marketing efforts. Reseller shall assign its End-Users that wish to order Products from Reseller's website a unique, non-transferrable password to use while under the care or counseling of the Reseller, that enables the End-Users to purchase Products directly through the Reseller's website in accordance with the terms of this Agreement.

(b) Reseller shall order desired Products from PERQUE and distribute the Products to End-Users, as medically indicated, as shipped by PERQUE or its designated supplier or



manufacturer, unopened and with all packaging, labels, marketing, advertising or promotional materials, instructions or literature intact and without alteration or modification.

(c) Reseller shall not authorize, appoint or use any dealers, agents, representatives, sub-distributors or other third parties (collectively “sub-distributors”) to sell or distribute the Products under the limitations of Section 3, without the express written consent of PERQUE and until said sub-distributor agrees to be bound by the terms and conditions of the Agreement. If Reseller or its sub-distributor sells or distributes Products outside the U.S., Reseller and sub-distributor must comply with any applicable U.S. export regulations and applicable laws and regulations of the country of import.

### 3. TRADEMARK LICENSE

**3.1 License.** PERQUE hereby grants to Reseller a non-exclusive license to use the PERQUE mark(s) solely in connection with Reseller’s sale, distribution, and if pre-approved by PERQUE in writing, advertising, marketing and promotion of the Products in accordance with Section 2. Such license includes the right to link to PERQUE’s web site, including use of PERQUE’s marks on Reseller’s web site. Reseller agrees that all use of the marks, and all goodwill arising out of such use, shall inure to the sole benefit of PERQUE.

**3.2 Restrictions.** Use of any PERQUE mark shall first be pre-approved in writing by PERQUE and used in accordance with any PERQUE trademark usage guidelines provided by PERQUE to Reseller. All advertising and other materials in which the marks are proposed to be used shall be subject to the prior written approval of PERQUE. Reseller shall leave in place all marks, labels and other trade designations placed by PERQUE on the Products (including designations indicating manufacture by PERQUE on the Products (including designations indicating **manufacture by PERQUE** or another party) and shall not alter any mark; use any mark for any purpose other than as stated in this Agreement, or add or attach to the Products or its packaging and associated materials, instructions, labels or literature any trademark, logo, label (other than price labels), marking or other designation that has not been approved in advance by PERQUE in writing. Reseller shall be responsible for, and liable to PERQUE for the actions of any sub-distributor that violates or breaches any provision contained in the preceding sentence. Reseller and any sub-distributor acknowledge that PERQUE or its licensors are the sole exclusive owner(s) of the PERQUE marks and any proprietary rights associated with the Products, its materials, instructions and literature provided by PERQUE. Reseller and its sub-distributors agree not to challenge or impair, or assist others in challenging or impairing, said marks or proprietary rights, even after the termination or expiration of this Agreement.

### 4. MARKETING AND PROMOTION OF PRODUCTS

If PERQUE provides its written approval for Reseller to market, advertise or promote the Products, Reseller shall (a) conduct business in a manner that reflects favorably at all times on the Products and the good name, goodwill and reputation of PERQUE; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to PERQUE, the Products or End-Users; (c) not publish or use any misleading or deceptive advertising material; (d) comply with all applicable state and federal laws regarding advertising and approved use of the Products; and (e) make no representations with respect to the Products that are inconsistent with the literature distributed by PERQUE, including, without limitation, all warranties and disclaimers contained in such literature. Reseller shall include in all advertising all applicable copyright, trademark and other proprietary or restrictive rights notices as they appear on or in the Products. Reseller shall comply with the MAP Policy which is available to the Reseller by PERQUE upon request.



## 5. WARRANTY

- 5.1 Reseller's Warranty.** Reseller represents and warrants that Reseller, and each sub-distributor, if applicable, is a (i) licensed physician or a qualified or certified health care professional in every state or foreign country under which he/she/it practices, including all practicing specialties and sub-specialties; and (ii) is in compliance with all laws and regulations that pertain to his/her/its health care practice.
- 5.2 Warranty Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE DIRECTLY TO END USERS BY PERQUE, PERQUE MAKES NO WARRANTIES WITH RESPECT TO ANY PRODUCTS, LICENSE, MATERIALS, INSTRUCTIONS OR LITERATURE AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. RESELLER AND RESELLER'S SUB-DISTRIBUTOR SHALL MAKE NO WARRANTIES, EXPRESS OR IMPLIED, ON BEHALF OF PERQUE.

## 6. TERM AND TERMINATION

- 6.1 Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of one (1) year from the Effective Date and this Agreement shall automatically renew for additional one (1) year periods, unless either party notifies the other in writing at least thirty (30) days prior to the end of the then current term that it does not wish to renew the Agreement, or unless earlier terminated in accordance with this Agreement.
- 6.2 Termination.** Either party shall be entitled to terminate this Agreement, immediately upon written notice to the other party, in the event of a material breach by the other party.
- 6.3 Effect of Termination.** Upon termination or expiration of this Agreement for any reason whatsoever:

(a) Reseller's status as an authorized reseller of Products shall cease and all rights and licenses granted to Reseller hereunder shall terminate immediately, including any option to purchase additional Products. Reseller's agreement with any sub-distributor shall similarly cease. Upon the expiration or termination of this Agreement, Reseller shall (except as set forth in Section 7.3(b), below) immediately: (i) cease all use and distribution of the Products; (ii) discontinue any use of the PERQUE marks; (iii) discontinue all representations or statements from which it might be inferred that any relationship exists between Reseller and PERQUE; and (iv) cease to promote or solicit or procure orders for the Products.

(b) Within ten (10) days following termination of this Agreement, Reseller shall submit to PERQUE an inventory list of unsold Products and within sixty (60) days of receiving such list, PERQUE shall have the exclusive option to repurchase all Products inventory that remains unsold at prices to be agreed upon by the parties, but in no event greater than the prices paid by Reseller for such Products. If PERQUE chooses not to exercise its repurchase option, Reseller shall have thirty (30) days to distribute its remaining inventory in accordance with the terms of this Agreement, or alternatively destroy all inventory remaining unsold and certify in writing to PERQUE such remaining inventory has been destroyed.

- 6.4 Survival of Terms.** The following sections shall survive any expiration or earlier termination of this Agreement: Sections 1, 3.2, 5, 6, and 7.



## 7. INDEMNIFICATION/DAMAGES WAIVER

Reseller shall defend, indemnify and hold PERQUE, its members, managers, agents, contractors and employees harmless against any and all claims, suits, proceedings, damages, judgments, fees and expenses or settlement thereof (hereinafter "Claim") in connection with or arising from any third party Claim based upon material breach, negligent act, error or omission of Reseller or Reseller's sub-distributor while in the course of performing its obligations under this Agreement. NEITHER PARTY SHALL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY THEORY OF CONTRACT, MISREPRESENTATION OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER OR NOT ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, PERQUE SHALL BE ENTITLED TO SEEK ALL AVAILABLE REMEDIES, INCLUDING WITHOUT LIMITATION, EQUITABLE RELIEF WITHOUT THE REQUIREMENT OF POSTING ANY BOND OR PROVING ACTUAL DAMAGES, TO ENJOIN ANY THREATENED OR CONTINUED BREACH OF SECTIONS 4 OR 5 OF THIS AGREEMENT.

## 8. MISCELLANEOUS

- 8.1 Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to its conflicts of law provisions. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the state courts in and for Loudoun County, Virginia (or, if there is federal jurisdiction, the United States District Court for the Eastern District of Virginia), and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts.
- 8.2 Assignment.** This Agreement may not be assigned, by Reseller without the prior express written consent of PERQUE. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.
- 8.3 Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall be in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of that or any other right or remedy.
- 8.4 Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices shall be sent to the address set forth below (or to such other address as a party may specify in writing):

If to PERQUE:

PERQUE Integrative Health  
44621 Guilford Dr, Ste 150  
Ashburn, Virginia 20147  
Telephone: 800-525-7372  
email: [clientservices@PERQUE.com](mailto:clientservices@PERQUE.com)

If to Reseller:

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**8.5 COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument

**8.6 ENTIRE AGREEMENT.** The provisions of this agreement, including any writings which are to be incorporated by reference, constitute the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior agreements or representations, oral or written, regarding such subject matter. This Agreement shall not be modified or amended except in a writing signed by a duly authorized representative of each party.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the Effective Date.