



**SUPP AMERICA**

**U.S. PHARMANUTRITIONAL COMPANY**

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**NON-DISCLOSURE  
AND NON-CIRCUMVENTION AGREEMENT**

**This Non-Disclosure and Non-Circumvention Agreement** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between **SUPP AMERICA** and its affiliates (collectively “Recipient”), and \_\_\_\_\_ and affiliates (collectively, “\_\_\_\_\_”), collectively known as “Parties.”.

**Whereas**, the Parties desire to disclose certain Confidential Information (as defined in Section 1 below) to further a business relationship between the parties (“the Business Purpose”) and to protect such Confidential Information from unauthorized disclosure and use; and

**Whereas**, the Business Purpose relates to discussing the Party’s business, and their financial information and strategies in particular, for the purposes of exploring a relationship with each other; and

**Now therefore**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the Parties agree as follows:

- 1. Confidential Information.** This Agreement will apply to all Confidential Information disclosed by one party to the other party. For purposes of this Agreement, “Confidential Information” shall mean any information that (i) the disclosing party identifies as confidential or otherwise specifically indicates or marks as confidential, (ii) any proprietary technologies, product information, technical data, specifications, drawings, sketches, computations and any other information of any kind whatsoever, whether written or not, concerning any portfolios of property for sale or financing in which a party has a possessory interest, (iii) the terms of all third-party contracts, (iv) potential investors, whether public or private, introduced by one party to the other, (v) all accounting, sales, advertising, marketing or management information, methods or techniques, any agreements or Letters of Interest (Letters of Understanding), any business plans, (vi) all records of the accounts of customers, customer lists, and any other records and books relating in any manner to the customers and/or suppliers of the parties, and (vii) any other information of any kind whatsoever, whether written or not, which information is not generally known in the businesses or industries in which the party is or may become engaged. Confidential Information shall be subject to the restrictions of this Agreement if it is in writing or other tangible form, only if clearly marked as proprietary or confidential when disclosed to the receiving party or, if not in tangible form, only if identified as propriety confidential at the time of disclosure and if summarized in a writing so marked and delivered to the receiving party within thirty (30) days of such disclosure, in which case the Confidential Information contained in such summary (not information contained solely in

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the non-tangible disclosure) shall be subject to the restrictions herein. The receiving party, for 2 years after the date of disclosure, shall keep such Confidential Information in confidence.

2. **Affiliates.** For purposes of this Agreement, an “Affiliate” shall mean an entity controlled by, controlling or under common control, as applicable, but only so long as such control exists. The cessation of such control shall not release an Affiliate of its obligation to comply with the terms and conditions of this Agreement for the period of time stated herein.
3. **Non-disclosure and Non-use.** The parties agree that they will (i) hold the Confidential Information disclosed by the other party in confidence, (ii) not disclose such Confidential Information to anyone other than employees, contractors or agents of the recipient, and (iii) not use any such Confidential Information for any purpose except for the Business Purpose. The parties shall protect and prevent the unauthorized use, dissemination, or publication of the Confidential Information disclosed by the other party by using the same degree of care as the receiving party uses to protect its own confidential information of like importance, but in any case using no less than a reasonable degree of care. Notwithstanding the preceding two sentences, recipient may disclose Confidential Information disclosed by the other party to its and its Affiliates’ employees, directors, officers, attorneys, accountants, financial advisors, and agents (collectively “Representatives”) who have a bona fide need to know, but only to the extent necessary to carry out the Business Purpose. Recipient may also disclose the Confidential Information disclosed by the other party to potential investors in the business of the Business Purpose (“Investors”) with a bona fide need to know, but only to the extent necessary to carry out the Business Purpose and only if such Investors are bound in writing to protect such Confidential Information and agree to the Non-Circumvention/Non-Solicitation limitations herein in a manner no less stringent than set forth in this Agreement. The Parties shall be responsible for any breach of this Agreement by their Representatives or contractors.

4. **Excluded Information.** Confidential Information will not include information disclosed by a party which:

- a. Now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public other than by a breach of this Agreement by the receiving party, its Representatives or contractors;
- b. Is hereafter rightfully furnished to the receiving party without restriction as to use or disclosure by a third party authorized to make such disclosure;
- c. Is information that the receiving party can document was independently developed by the receiving party without reference to the Confidential Information disclosed by the other party; and
- d. Is disclosed with the prior written consent of the other party.

5. **Disclosure Required by Law.** In the event the receiving party is required by law, regulation or a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, to disclose any of the Confidential Information disclosed by the other party, the receiving party will promptly notify the other party in writing of the existence, terms and circumstances surrounding such required disclosure so that the disclosing party may seek a protective order or other appropriate remedy from the proper authority. The receiving party agrees to reasonably cooperate with the disclosing party in seeking such order or other remedy. The receiving party further agrees that if it is required to disclose Confidential Information of the other party, it will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such Confidential Information.

6. **Return of Information.** The receiving party will promptly return to the disclosing party, or, if so directed by the disclosing party in writing, destroy all tangible items containing or consisting of the disclosing party’s Confidential Information and all copies thereof upon the earlier of (i) the disclosing party’s request or (ii) the expiration or earlier termination of this Agreement. In addition, all parties shall ensure the destruction of all notes, analyses and other information prepared or extracted by any party and its Representatives from the Confidential Information of the other party, and shall certify such destruction by a duly authorized officer upon the request of the other party.

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7. **No Licenses.** Recipient recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights to the receiving party, by license or otherwise, to any of the Confidential Information disclosed by the disclosing party except as specified in this Agreement. Additionally, this Agreement imposes no obligations on either party to purchase, sell, license, transfer or otherwise dispose of any technology, services or products. Nothing in this Agreement shall be deemed to grant to any party a license under the other party's copyrights, patents, trade secrets, trademarks or other intellectual property rights.
8. **Relationship of the Parties.** Nothing in this Agreement nor in any discussion undertaken nor disclosures made pursuant to this Agreement shall be deemed a commitment to disclose any information to any party or to engage in any business relationship, contract or future dealing with any other party. In addition, nothing in this Agreement shall be deemed to limit any party's right to conduct similar discussions or perform similar activities to those undertaken in accordance with this Agreement, unless such discussions or activities are in violation of the terms hereof.
9. **Disclaimer.** The Parties understand and acknowledge that neither party makes any representation or warranty, express or implied, as to the accuracy or completeness of Confidential Information disclosed hereunder. The disclosing party shall have no liability or responsibility for errors or omissions in, or any decisions made by the receiving party in reliance on, any Confidential Information disclosed under this Agreement.
10. **Remedies.** Recipient acknowledges that:
- All Confidential Information disclosed by the other party is owned solely by the disclosing party (or its contractors or licensors);
  - Such Confidential Information is unique and valuable to the disclosing party; and
  - The unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the disclosing party, for which monetary damages alone would not be an adequate remedy.

Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement, the disclosing party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to, and not in lieu of any other remedies available to the disclosing party, including but not limited to monetary damages.

11. **Confidentiality of Agreement.** Except upon written agreement, or as may be required by law (and then, only in compliance with Section 5 above), the parties shall disclose the existence or terms of this Agreement, the discussions that gave rise to this Agreement, or the fact that there have been, or will be, discussions or negotiations contemplated by this Agreement.
12. **Non Circumvention.** When one party provides an Introduction and such Introduction is not outside of this Agreement pursuant to section 3 (above), the recipient agrees that for the life of this Agreement and for a period of five (5) years thereafter, it will not enter into any business relationships with such Introduction which would be competitive with the business of the party who made the introduction. If such an introduction is being provided for financing of the Business Purpose, the recipient will not seek financing from such party for the same period of time. Further, recipient agrees that for the same period of this Agreement and for a period of five (5) years thereafter, it will not disclose or attempt to circumvent the spirit of this Agreement by using any Confidential Information received from one or more of the Parties for its own benefit, absent the participation of the other Parties hereto.
13. **Non-Solicitation.** For a period of one (2) years after the execution of this Agreement, neither Party nor its representatives shall, directly or indirectly, solicit for employment any officer, director or employee of Company or parties whom another party is representing, specifically including the Administrator, pursuant to the Business Purpose.
14. **Seminars.** This Agreement assumes that the aforementioned Introductions and disclosed information

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directly flows from Seminars conducted by, or participated in, by the Parties as a whole. Seminars conducted by, or participated in, by only one of the Parties, and the Introductions and information obtained therefrom, shall not be subject to this Agreement and the Introductions and information therefrom shall be the exclusive property of that Party.

**15. General Provisions.**

- a. No waiver, modification or amendment of any provisions of this Agreement shall be valid unless made in writing, signed by all parties, and specifying with particularity the nature and extent of such a waiver, modification or amendment. Any such waiver, modification or amendment shall, in no event, be construed to be a general waiver, abandonment, modification or amendment of any of the terms, conditions or provisions of this Agreement, but such waiver shall be strictly limited and restricted to the extent and occasion specified in such signed writing.
- b. If any party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. This Agreement shall be construed, adjudicated and controlled by the substantive laws of the State of California.
- c. This Agreement is the complete and exclusive statement regarding the subject matter of this Agreement and supersedes all prior agreements, understandings and communications, oral or written, between the parties regarding the subject matter of this Agreement.
- d. Any party shall assign any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior written consent of the other parties, which consent shall not be unreasonably withheld.
- e. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
- f. All parties shall adhere to all applicable laws, regulations and rules relating to the export of personal information and technical data, and shall not export or re-export any personal information or technical data, any products received from the disclosing party, or the direct product of such personal information or technical data, except in accordance with such applicable laws, regulations and rules.
- g. The parties agree that this Agreement may be executed in counterparts with signatures being exchanged via facsimile; and that recipient will provide an original signed copy to the other party via air express immediately thereafter. Such counterparts will be considered original parts of this Agreement and incorporated herein.
- h. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein.

**In Witness Whereof, the parties hereto have executed this Agreement by their duly authorized officers or representatives.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: **SUPP AMERICA**

Title: \_\_\_\_\_