

VITACHERRY® TRADEMARK LICENSE AND RAW MATERIALS SUPPLY AGREEMENT

This agreement (hereinafter referred to as "Agreement") is entered into as of the 26th day of August, 2019 (the "Effective Date") by and between VDF FutureCeuticals, Inc., an Illinois corporation located at 2692 N. State Rt. 1-17, Momence, IL 60954, USA ("VDF FC"), and Tsunami Nutrition S.R.L, located at Via Marcandreola 5, 00043 Ciampino (Rome), Italy ("LICENSEE"). VDF FC and LICENSEE may be collectively referred to hereinafter as "the Parties" and individually as a "Party."

WHEREAS, VDF FC owns the trademark VitaCherry® as well as the VitaCherry® Sport logo(s) set forth below, and all goodwill associated with such trademark in the United States and elsewhere:



such marks collectively referred to herein as the "Trademarks," and all of the U.S. and international common law, registered and other trademark rights related thereto collectively referred to herein as the "Trademark Rights";

WHEREAS, under conditions described herein, VDF FC has agreed to allow LICENSEE to use the Trademarks and Trademark Rights to sell certain various nutritional supplement products. (the "Products");

NOW THEREFORE, in consideration of the mutual covenants and promises exchanged, the Parties agree as follows:

1. DEFINITIONS.

For the purposes of this Agreement, the terms listed within this instant Article I shall be defined as follows:

1.1 "Term" shall mean the period of time during which the Agreement is in force. The Term shall commence on the Effective Date and continue for a period of twenty-four (24) months ("Initial Period").

1.2 "Licensed Channels" shall mean the channels of commerce in which LICENSEE may sell products using the VDF FC license granted by this Agreement. The Licensed Channels are retail supplement nutrition stores, pharmacy, network marketing, and direct-to-consumer online channels.

1.3 "Raw Material" and/or "Raw Materials" shall mean VDF FC's VitaCherry® Sport material, VDF FC product number N1244.

1.4 "Specifications" shall mean the specifications for the Raw Material as set forth in Exhibit A, attached hereto.

1.5 "Product" or "Products" shall mean LICENSEE's ready-to-mix beverage products that contain the Raw Materials in combination with other ingredients. Products shall not include products that contain the Raw Materials in stand-alone application.

1.6 "Contract Manufacturer" shall mean the party authorized to purchase Raw Materials on behalf of LICENSEE. The Contract Manufacturer is Eudinamis S.R.L, located at Via del Salice, 42, 47822 Santarcangelo di Romagna (RN), Italy.

2. GRANT OF NON-EXCLUSIVE LICENSE.

2.1 Conditioned upon LICENSEE's introduction into the consumer market of the Products within twelve (12) months of the Effective Date, VDF FC grants to LICENSEE, within the Licensed Channels, the non-exclusive, royalty-free license to use the Trademarks and Trademark Rights, such grant limited to LICENSEE's use solely in conjunction with the Products, and only to Trademarks for such time that they remain in force.

2.2 LICENSEE's failure to comply with all of its obligations under this Agreement shall result in a termination of the non-exclusive license defined in Paragraph 2.1.

3. RENEWAL AND TERMINATION.

3.1 *Renewal of the Agreement.* At the end of the Initial Period, the Term shall be renewed automatically for additional periods of one (1) year (each hereinafter referred to as a "Period"), unless either Party notifies the other Party in writing, at least sixty (60) days prior to the end of the Initial Period or subsequent Period thereof, of its intention not to renew this Agreement.

3.2 *Earlier Termination of the Agreement by LICENSEE.* LICENSEE has the right to terminate this Agreement upon giving VDF FC ninety (90) days written notice. Upon such termination, all outstanding payments due VDF FC per this Agreement will be duly accounted, reported and paid by LICENSEE to VDF FC. Any purchase orders submitted to VDF FC prior to termination, even if not fulfilled at the time of said termination, shall continue to be considered a firm commitment, and the obligation to pay shall not be terminated.

4. BREACH OF CONTRACT.

4.1 *Insolvency.* A Party will be in breach of this Agreement if: (i) such Party is deemed insolvent or files an application in, or seeks protection under, any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or any such proceeding is instituted against such Party; (ii) a trustee or receiver is appointed for such Party; or (iii) such Party makes a general assignment or arrangement for the benefit of its creditors, or comes within the provisions of any law relating to insolvent debtors.

4.2 *Ceasing Business Operations.* A Party will be in breach of this Agreement if such Party ceases to be registered to do business, dissolves its business, files articles

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of dissolution or their equivalent, or otherwise ceases its normal business activities.

5. ADDITIONAL CONSIDERATION

5.1 During the Term, LICENSEE, either individually or through the Contract Manufacturer, shall purchase one hundred percent (100%) of its requirements for the Raw Material from VDF FC.

5.2 Either during or after the Term, neither LICENSEE nor the Contract Manufacturer shall obtain any material to be labeled or marketed as "VitaCherry®," "VitaCherry® Sport," or a confusingly similar term from any source other than VDF FC.

5.3 Either during or after the Term, LICENSEE may use the Raw Material only in connection with the Products.

5.4 Either during or after the Term, LICENSEE and the Contract Manufacturer shall not engage in any actions to produce, or to attempt to produce, or to cause any third-party to produce any raw materials that are substantially similar to the Raw Materials, other than pursuant to the terms outlined in this Agreement.

5.5 At any time during the Term and one (1) year thereafter, VDF FC may audit the records of LICENSEE relating to the purchases made of the Raw Material.

5.6 Upon written request of VDF FC, LICENSEE shall allow VDF FC or its third-party representative to inspect all relevant processes used in making and selling the Products for compliance with this Agreement.

6. RAW MATERIAL

6.1 Compliance with Laws and Specification. The Raw Material: (a) shall be manufactured, packaged, labeled, handled, stored and shipped in compliance with the Specifications and all applicable U.S. laws including, without limitation, applicable U.S. cGMPs; (b) at the time of delivery to LICENSEE or the Contract Manufacturer, shall not be adulterated, mislabeled, or misbranded under U.S. law, and shall be free from material defects in material and workmanship.

6.2 Payment. LICENSEE, or the Contract Manufacturer on LICENSEE's behalf, shall pay invoiced amounts within thirty (30) days from the date of the invoice. Any payments required to be made under this Agreement shall be made in U.S. currency by corporate check or by wiring transfer to such account as specified in writing by VDF FC.

6.3 Forecasts. During each calendar month during the Term, LICENSEE, either directly or through the Contract Manufacturer, shall provide to VDF FC a twelve-month rolling forecast of its estimated Raw Material requirements (each a "Forecast"). Such Forecasts shall not be considered commitments by LICENSEE to purchase any Raw Material but must be proffered in good faith.

6.4 Minimum Dosage. The Raw Materials shall comprise a minimum total of one hundred (100) milligrams per serving of the Product.

7. RECOVERY OF RIGHTS

7.1 Upon termination of this Agreement for any reason, all of LICENSEE's rights in any of the Trademark Rights shall terminate and revert back to VDF FC.

7.2 Upon termination of this Agreement for any reason, except for a breach of this Agreement by LICENSEE, LICENSEE shall retain only the right to sell off any remaining inventories for a period of three (3) months.

8. TRADEMARK AND BRAND USE

8.1 LICENSEE shall ensure that all of the Products and related materials, including without limitation, advertising materials, ingredient sheets, or other product literature, are marked with the following trademark designations: "VitaCherry® is a trademark of VDF FutureCeuticals, Inc., used under license."

8.2 Unless prohibited by law, LICENSEE shall use the VitaCherry® Sport logo and/or the VitaCherry® word mark in supplement facts and/or the ingredient panel.

8.3 LICENSEE shall not use any of the Trademarks as a generic term in advertising materials or elsewhere.

8.4 Upon written request of VDF FC, LICENSEE shall furnish to VDF FC samples of the Products, advertising, and labels with which any of the Trademarks or Brand are used or associated.

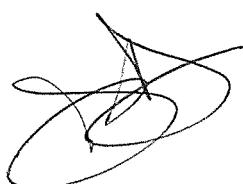
8.5 LICENSEE is liable for any unauthorized and improper use or misuse of any of the Trademarks by LICENSEE, its successors, assignees, and agents during the term of this Agreement.

8.6 LICENSEE shall not use the Trademarks or Brand in any manner that expresses or implies VDF FC's affiliation, sponsorship, certification or approval of LICENSEE's products, and further agrees not to use the Trademarks, or Brand as part of, or next to, or as, LICENSEE's (or its agents' or affiliates') company name, trade name, product name, service name or domain name.

8.7 LICENSEE shall not take any action that contests or otherwise adversely interferes with the Trademark Rights or VDF FC's patents within the United States or anywhere throughout the world, or that adversely affects VDF FC's ability to secure and maintain corresponding patent or trademark rights anywhere in the world.

9. INFRINGEMENT

9.1 If LICENSEE becomes aware of any infringement or alleged infringement of the Trademarks, then LICENSEE shall promptly notify VDF FC in writing.



9.2 In any infringement lawsuit LICENSEE shall, at VDF FC's request, cooperate in all respects and, to commercially reasonable extent, have its employees testify when requested and make available relevant records, information, samples, specimens, and the like.

10. REPRESENTATIONS AND WARRANTIES

10.1 LICENSEE hereby represents and warrants to VDF FC as follows:

10.1.1 There are no outstanding or pending agreements, assignments, understandings, lawsuits, proceedings, or encumbrances inconsistent with the provisions of this Agreement which, in any manner, prohibit the transactions contemplated by this Agreement or impair the ability of LICENSEE to perform its obligations hereunder;

10.1.2 LICENSEE shall ensure that it and its employees, subcontractors, and affiliates comply with all applicable laws and government regulations, and any policies, regulations, and/or directives of VDF FC.

10.1.3 LICENSEE shall be solely responsible for regulatory compliance in connection with the activities it undertakes in any country outside of the United States.

11. INDEMNITY

11.1 *VDF FC Indemnity*. VDF FC agrees to defend, indemnify and hold Licensee, its Affiliates and each of their respective officers, directors, agents, employees and successors in interest, harmless from any and all third party claims and resulting judgments, damages, liabilities, costs, losses or expenses (including court costs and reasonable attorney fees)(collectively, "Losses") which arise out of (i) the breach by VDF FC of any term or condition of this Agreement, or (ii) a claim that the Raw Materials, Trademarks, or any related intellectual property infringes the intellectual property rights of a third party. Licensee shall give VDF FC reasonably prompt notice of any claim to which this indemnity and hold harmless might apply. VDF FC shall have the sole authority to conduct the defense of or settle any such claim or any action or proceeding based upon such claim, with the understanding, however, that Licensee may retain additional counsel and participate in any such action or proceeding at its own expense.

11.2 *Licensee Indemnity*. Licensee agrees to defend, indemnify and hold VDF FC, its Affiliates and sister companies, and each of their respective officers, directors, agents, employees and successors in interest, harmless from any and all third party claims and resulting Losses which arise out of or relate to the manufacture, processing, packaging, labeling, storage, distribution, sale, sampling, testing, handling or consumption of Products, unless any such Losses are solely or partially due to an act or omission of VDF FC, in which case liability shall be apportioned according to fault. VDF FC shall give Licensee reasonably

prompt notice of any claim to which this indemnity and hold harmless might apply. Licensee shall have the sole authority to conduct the defense of or settle any such claim or any action or proceeding based upon such claim, with the understanding, however, that VDF FC may retain additional counsel and participate in any such action or proceeding at its own expense.

12. MISCELLANEOUS PROVISIONS

12.1 *Notices*. All notices shall be given in writing and shall be (i) personally delivered, (ii) mailed by prepaid certified or registered mail or overnight courier, or (iii) by email transmission. Notice shall be addressed to the Parties at their respective addresses listed herein. Notice shall be deemed to have been given (i) the day such notice or communication is personally delivered or emailed, (ii) three days after mailing by prepaid certified or registered mail, or (iii) one business day after mailing by overnight courier.

12.2 *Choice of Law; Venue*. This Agreement shall be governed by the laws of the State of Illinois. The Parties expressly agree to the exclusive jurisdiction and venue of the state and federal courts located in Chicago, Illinois for the resolution of any dispute concerning this Agreement.

12.3 *Right to Seek Legal Relief Retained and Fee Shifting*. In the event a legal action is filed regarding LICENSEE's alleged breach of this contract, and VDF FC prevails in such legal action, VDF FC shall be entitled, as an element of damages, to its costs in prosecuting the legal action, including reasonable attorneys' fees.

12.4 *Severability*. In the event any part or parts of this Agreement are found to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid, illegal, or unenforceable part or parts were originally deleted.

12.5 *Successors and Assigns*. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assignees and agents. Notwithstanding the preceding, LICENSEE shall not sell the Agreement as an asset nor assign the Agreement without the written permission of VDF FC.

12.6 *Limitation of Damages*. Other than in cases of intentional misconduct, in the event that any goods are determined by VDF FC to be defective in any respect due to the direct actions or inaction of VDF FC, then VDF FC, in its sole discretion, shall decide whether to replace the defective goods or to refund the purchase price for such goods. The foregoing is LICENSEE's sole remedy against VDF FC in the event that any goods are found to be defective other than as a result of intentional misconduct. However, any liability as a result thereof is limited to the price paid by LICENSEE to VDF FC. IN NO EVENT SHALL VDF FC BE LIABLE TO



LICENSEE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

12.7 *Failure to Enforce.* Failure of any Party herein to enforce any of the provisions of this Agreement shall not constitute waiver to enforce that term in the future.

12.8 *Expected Performance.* Each Party agrees to perform all acts and execute and deliver all documents as may be necessary, convenient, or appropriate to carry out the intent and purposes of this Agreement.

12.9 *Force Majeure.*

12.9.1 Neither Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party which causes the Party to be unable to perform its obligations under this Agreement; and which it has been unable to overcome by the exercise of due diligence. This includes, but is not limited to, flood, drought, weather, earthquake, storm, fire, pestilence, lightning, and/or any other natural catastrophes, epidemic, war, riot, acts of terrorism, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of either Party's facilities, or any order or injunction made by a court or public agency.

12.9.2 In the event of the occurrence of such a force majeure event, the Party unable to perform shall as

soon and promptly as practicable notify the other Party. It shall also use its best efforts to resume performance as quickly as possible, and suspend performance only for such period of time as is necessary as a result of the force majeure event.

12.10 *Entire Agreement.* This Agreement embodies the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes and replaces all pre-existing agreements or understandings between LICENSEE and VDF FC. No amendment or modification of this Agreement shall be valid except by mutual written agreement.

12.11 *No Construction.* No Party hereto nor any attorney for any Party shall be deemed the drafter of this Agreement for the purpose of interpreting or construing any of the provisions hereof.

12.12 *Representation by Counsel.* Each of the Parties acknowledges that it has had the opportunity to be represented by independent legal counsel of its own choice throughout all of the negotiations that precede and include the execution of this Agreement.

12.13 *Counterparts.* This Agreement may be executed in any number of counterparts by facsimile or e-mail, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.



So agreed and executed as set forth below:

VDF FUTURECEUTICALS, INC.

By: 

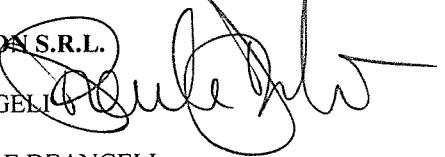
Printed Name: J. Randal Wexler

Title: Vice President and General Counsel

Date: August 26, 2019

Email: rwexler@futureceuticals.com

TSUNAMI NUTRITION S.R.L.

By: DANIELE DEANGELI 

Printed Name: DANIELE DEANGELI

Title: BUSINESS MANAGER

Date: 26/08/19

Email: daniele.d@tsunaminutrition.com

Mailing Addresses:

VDF FC: VDF FutureCeuticals, Inc.
2692 N. St. Rt. 1-17
Momence, Illinois 60954
USA

LICENSEE: Tsunami Nutrition S.R.L.
Via Marcandreola 5
00043 Ciampino (Rome)
Italy

EXHIBIT A: SPECIFICATION (1 OF 2)



Product Specification

VitaCherry® Sport

N1244

PRODUCT CHARACTERISTICS

Botanical Name	<i>Prunus cerasus</i> var. <i>Montmorency</i>	Plant Part	Cherry
Description	Powder	Flavor	Characteristic
Kosher	Pareve per Orthodox Union	Organic	No

PRODUCT PROFILE

METHOD

SPECIFICATION

Particle Analysis FCCM P.2.1 98% through U.S.A. #20 sieve

Moisture FCCM P.1.1 4.0 % Maximum

Identity HPTLC Characteristic

Irradiation Detection PSL Negative

Color Visual Pink to Red

ACTIVE ASSAY

METHOD

SPECIFICATION

Anthocyanins HPLC 0.1% Minimum, 0.15% Typical

Type 1&2 Anthocyanins (Cyn-3-Glu-Rut, Cyn-3-Rut) HPLC 0.1% Minimum, 0.15% Typical

ANALYSIS

METHOD

SPECIFICATION

Heavy Metals by ICP-MS AOAC 993.14M NMT 10 ppm

Arsenic AOAC 993.14M NMT 5 ppm

Cadmium AOAC 993.14M NMT 3 ppm

Lead AOAC 993.14M NMT 1 ppm

Mercury AOAC 993.14M NMT 0.5 ppm

Pesticide Residue (Tested Annually) USP <561> Meets USP Limits

MICROBIOLOGICAL PROFILE

METHOD

SPECIFICATION

Total Aerobic Plate Count AOAC 990.12 NMT 10,000 CFU/g

Yeast and Mold AOAC 997.02 NMT 5,000 CFU/g

Coliform AOAC 991.14 NMT 50 CFU/g

E. Coli AOAC 991.14 Less than 10 CFU/g

Salmonella Modified FDA BAM Negative/375g

Coag Positive Staph. Modified FDA BAM Negative/g

Status:	Current Review Date	Previous Review Date	Supersedes	Quality Compliance Coord.: Jessica Schweizer	Quality Compliance Admin.: Riley Suttyak
Active	04/15/2019	08/18/2017	04 of 08/26/2016	<i>2018-08-26</i>	<i>Riley Suttyak</i>

Customer Approval Initial: *[Signature]*

Date: 26/08/19

Page 1 of 2

Sales & Customer Service Office
2692 N. State Rt. I-17 - Momence, IL 60954
1-888-452-6853

EXHIBIT A: SPECIFICATION (2 OF 2)



Product Specification

VitaCherry® Sport

N1244

INGREDIENT STATEMENT

Montmorency Tart Cherry, Silicon Dioxide

COUNTRY OF ORIGIN

Montmorency Tart Cherry: USA; Silicon Dioxide: USA

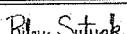
PACKAGING AND STORAGE

Pack Size: 18.18 kg

Packaging: Polyethylene Liner, Heat Sealed, Corrugated Package

Storage: Cool, Dry

Best if Used by or Retest Date: 24 months from date of manufacture when stored in original unopened package.

Status:	Current Review Date	Previous Review Date	Supersedes	Quality Compliance Coord.: Jessica Schweizer	Quality Compliance Admin.: Riley Sutyak
Active	04/15/2019	08/18/2017	04 of 08/26/2016		

CUSTOMER APPROVAL

Company Name: TSUNAMI NUTRITION SLR
Signature: Jessica Schweizer Date: 26/08/19
Printed Name: DANIELLE DEANGELIS Title / Position: BUSINESS MANAGER

Invalid without Approval Signatures

Page 2 of 2

Sales & Customer Service Office
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I-SSS-452-6553

