

# **BERA Enterprise, Inc.**

## **Affiliate Agreement and Terms of Use**

**Effective Date:** [Insert Date]

This is a legally binding agreement between you and BERA Enterprise, Inc., (“BERA,” “we,” or “us”) about your role as an Affiliate and your use of the BERA Affiliate website and related websites, applications, and services, such as our Back Office website, replicated sites and mobile applications (collectively, the “Site”). Your use of the Site means that you have read, understand, and agree to the following terms and conditions, including those incorporated by reference (“Terms of Use”). Please read these Terms of Use carefully before you use the Site. IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU MUST NOT USE OR STOP USING THE SITE IMMEDIATELY. References in these Terms of Use to “you” or “your” refer to you, the person requesting access to and use of the Site.

**Parties:**

- **Company:** BERA Enterprise, Inc.'s principal executive office is at 621 – 67<sup>th</sup> St. Circle E, #101B, Bradenton, FL 34208 (subject to change by Board approval).
- **Affiliate:** [Affiliate Name], [Affiliate Address]

### **1. Purpose of Agreement**

This agreement outlines the terms and conditions under which the Affiliate will use BERA’s site and resources to promote BERA’s products and services. Subject to the terms and conditions of this Affiliate Agreement, BERA grants Affiliate (a) the right to be a Distributor and market BERA products through person-to-person sales, and (b) sponsor new Affiliates to BERA. The Affiliate agrees to adhere to all guidelines, instructions, and policies provided by BERA to ensure consistent and compliant BERA brand promotion.

### **2. Account and Personal Information**

You must register for and maintain an active Affiliate user account. Account registration requires you to submit certain personal information, which may include without limitation, your name, age, date of birth, address, and mobile phone number. You acknowledge and agree that this information (excluding your unique username and password) may be used and disclosed by us per our Privacy Policy. By agreeing to these Terms of Use and by using the Site, you also agree and consent to all actions taken by BERA concerning your information in compliance with the Privacy Policy.

We may suspend or terminate your right to use the Affiliate Site for any or no reason and at any time in our sole discretion, including if we learn you provided us with false or misleading data or other information. You must treat any information BERA provides as confidential and not disclose it to any other person or entity. You acknowledge your account is personal to you and agree not to provide any other person with access to this Site or portions of it using your Information. You are solely responsible for maintaining the confidentiality of your Information, and you are solely responsible for all use of your Information or account, whether authorized by you or not. You also agree to notify BERA immediately of any unauthorized access to or use of your Information, account, or any other security breach.

### **3. Confidentiality**

**3.1 Confidential Information:** The Affiliate acknowledges that during their association with BERA, they may receive access to confidential information, including but not limited to, trademarks and copyrights of BERA, product formulations, marketing strategies, pricing, customer data, and business plans. The Affiliate has an affirmative duty to maintain the confidentiality of this information and not disclose it to any third party without prior written consent from BERA. This duty extends to any affiliates, employees, contractors, or agents Affiliate employs in its activities under this Agreement. Nothing contained on the Site should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademarks displayed on the Site,

**3.2 Non-Disclosure Obligation:** The Affiliate agrees that they will not share, distribute, or utilize any of BERA's confidential information for personal gain or in a manner that could harm the company, either during the term of this agreement or after its termination. Any unauthorized use is strictly prohibited and violates the rights of BERA, or third parties, including, without limitation, under copyright laws, trademark laws, and the laws of privacy and publicity.

**3.3 Return of Confidential Information:** Upon termination of this agreement, the Affiliate must return or destroy all confidential information in their possession and confirm this in writing to BERA.

### **4. Product Use and Promotion**

**4.1 Usage:** The Affiliate agrees to use BERA products strictly according to the instructions provided by the company and shall not change, modify, add to, or subtract from in any way the ingredients, or formulations provided by BERA. The Affiliate is expected to provide honest feedback and testimonials based on their personal experience with the products.

#### **4.2 Promotion Guidelines:**

- **Compliance:** The Affiliate must comply with all promotional guidelines provided by BERA, including the use of approved marketing materials and adherence to claims substantiation. The Affiliate may not make false or misleading statements or representations about BERA products.
- **Social media and Online Promotion:** The Affiliate agrees to promote BERA products only on BERA-approved platforms and through methods consistent with BERA's brand image and values. All online content used by Affiliate and related to BERA must be pre-approved in writing by BERA.
- **Public Feedback:** The Affiliate grants BERA an irrevocable license to use their testimonials, feedback, and images in any marketing materials, including but not limited to websites, social media, print media, and other promotional channels.

**4.3 Prohibited Activities:** The Affiliate may not engage in high-pressure sales tactics, false advertising, or cross-recruiting for other competing brands while promoting BERA products.

## **5. Compensation and Fees**

**5.1 Commission Structure:** The Affiliate will be compensated based on a commission structure, details of which will be provided in a separate compensation plan document. Commissions are calculated based on the sales generated through the Affiliate's effort subject to verification and approval by BERA.

**5.2 Product Purchase:** The Affiliate agrees to purchase BERA products at a discounted rate provided by the company. This is necessary for the Affiliate to use and promote the products authentically. The Affiliate is responsible for all costs associated with these purchases, including shipping and handling.

**5.3 Payment Terms:** Commissions will be paid out weekly, provided that the Affiliate meets the minimum payout threshold specified in the compensation plan. Any disputes regarding commission payments must be raised in writing within thirty (30) calendar days of the payment date.

## **6. Term and Termination**

**6.1 Term:** This agreement shall commence on the Effective Date and continue until terminated by either party following the terms herein.

**6.2 Non-Employee Status:** This agreement establishes an Affiliate status only with BERA. The Affiliate shall be treated as a 1099 independent contractor under this agreement. Nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, franchisor/franchisee, or employer-employee relationship between Affiliate and BERA. Affiliate shall have no authority to and shall not enter into any agreement(s) or obligation(s) purporting to be binding upon BERA. As an independent contractor, Affiliate is solely and exclusively responsible (i) for all its taxes payable for income earned through this agreement; (ii) for obtaining any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by law, and is not covered by or eligible for any insurance from BERA; and (iii) for ensuring that Affiliate complies with any Licensing Authority's rules or practices.

**6.3 Termination by Affiliate:** The Affiliate may terminate this agreement anytime by providing thirty (30) calendar days written notice to BERA.

**6.4 Termination by BERA:** BERA reserves the right to terminate this agreement immediately, without notice, if the Affiliate violates any terms of this agreement or engages in conduct that BERA deems harmful to its brand or business interests. Determination of what conduct or behavior(s) constitute a violation of this agreement or harmful to BERA shall be at the discretion of BERA and a majority vote of its officers.

**6.5 Effect of Termination:** Upon termination, the Affiliate must immediately cease use of the Site, cease all promotional activities related to BERA, and remove any references to BERA products from their marketing channels. The Affiliate must also return or destroy any confidential information in their possession and confirm this in writing to BERA.

## **7. Affiliate Obligations**

**7.1 Compliance with Laws:** The Affiliate agrees to comply with all applicable laws and regulations, including but not limited to consumer protection laws, advertising standards, and data protection regulations.

**7.2 Ethical Conduct:** The Affiliate agrees to conduct its promotional activities ethically, avoiding any practices that could harm the reputation of BERA or its products. Affiliate further agrees not to make any claims about BERA Products unless they are contained on BERA labels or in official BERA literature.

**7.3 Account Management:** The Affiliate is solely responsible for maintaining the confidentiality of their account information, including login credentials. The Affiliate is solely liable for all activities conducted through their account.

## **8. Limitation of Liability**

**8.1 Indemnification:** The Affiliate agrees to defend, indemnify, and hold harmless BERA, its affiliates, and their respective officers, directors, employees, and agents from any claims, damages, liabilities, judgments, awards, costs, or expenses (including attorney's fees) arising out of or related to the Affiliate's activities under this agreement.

**8.2 Liability Cap:** In no event shall BERA's liability exceed the total amount of commissions paid to the Affiliate in the twelve (12) months preceding the event giving rise to the claim. This limitation of liability applies whether such damages arise out of breach of contract, tort (including negligence), or otherwise regardless of whether such damages were foreseeable or BERA was advised of the possibility of such damages.

**8.3 Exclusion of Damages:** BERA shall not be liable for any special, consequential, indirect, incidental, or punitive costs or damages including but not limited to the loss of profits or business opportunity arising from or related to this agreement.

This section will survive the termination of this Agreement and Terms of Use.

## **9. Governing Law and Dispute Resolution**

**9.1 Governing Law:** This agreement shall be governed by and construed by the laws of the State of Delaware and Georgia, without regard to its conflict of laws principles. Affiliate agrees and submits to the exclusive personal jurisdiction and venue of the Federal and State Courts of Delaware, United States of America. Use of the Site is unauthorized in any jurisdiction that does not give effect to all provisions of these Terms of Use, including, without limitation, this paragraph. Any failure by BERA to enforce any of its rights under this Agreement and Terms of Use or applicable law shall not constitute a waiver of such rights.

**9.2 Dispute Resolution:** Any disputes arising from or related to this agreement shall be resolved exclusively through binding arbitration in Delaware. The arbitration shall be initiated and conducted under the arbitration rules of the respective jurisdiction in effect at the time the request for arbitration is made. The arbitration shall be final and binding upon the Parties. Any Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise,

no Party shall initiate or prosecute any lawsuit or administrative action in any way related to any Dispute. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. The parties waive any further right to a trial by jury or to participate in a class action lawsuit.

## **10. Force Majeure**

BERA shall not be responsible or liable for any delay or failure to fulfill any provision of this Agreement if such a delay or failure results directly or indirectly from any act of God, war, riot, insurrection, embargoes, acts of civil or military authorities, fires, floods, explosions, accidents, or any other cause beyond the reasonable control of BERA.

## **11. Miscellaneous**

**11.1 Entire Agreement:** This agreement, together with any documents incorporated by reference, constitutes the entire agreement between the parties and supersedes all prior agreements, representations, and understandings, whether written or oral.

**11.2 Amendments:** No amendment to this agreement shall be effective unless in writing and signed by both parties.

**11.3 Assignment:** The Affiliate may assign or transfer any rights or obligations under this agreement with the prior written consent of BERA. BERA may assign this agreement without restriction.

**11.4 Severability:** If any provision of this agreement is deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect.

**11.5 Notices:** All notices required or permitted under this agreement shall be in writing and delivered to the parties at their respective addresses or via email.

I [Affiliate Name] have previously reviewed the Affiliate Agreement and Terms of Use or have had sufficient time and opportunity to have this agreement reviewed by its attorney of choice and agree to these terms, before conducting any Affiliate activity. If I refuse to follow any provision of the Affiliate Agreement and Terms of Use, I agree to notify BERA in writing and cancel my affiliation. If canceled within the next thirty (30) days, I will receive a refund for products and materials returned under Paragraph 6 of the Affiliate Agreement and Terms of Use.

I [Affiliate Name] acknowledge that the only required payment to become an Affiliate is the annual Affiliate Fee set by BERA, which grants me access to the Site and Business Portfolio containing information about the opportunity, products, and forms. I understand that the purchasing of any BERA Products, including Product Packages, and Product Subscription Services, is optional and is not required to become an Affiliate.

If I have elected to participate in the Subscription Services Program, then subject to the terms and conditions of this Contract, I agree that I will (i) receive the quantities of BERA Products I have selected, and (ii) pay for them by the method I have selected.

I certify that I am 18 years old and legally able to enter this Contract (which includes the Binding and Mandatory Arbitration Agreement) and agree to be bound by the terms and conditions of the Contract.

**Affiliate Signature:**\_\_\_\_\_ **Date:**\_\_\_\_\_

**Affiliate Signature:**\_\_\_\_\_ **Date:**\_\_\_\_\_