

SUB-DISTRIBUTION AGREEMENT

The Distributor is engaged in the distribution of products pursuant to the Territory Sales Agreement between the [Company] (the “Company”) and [Distributor Name] dated [Signature Date under the related TSA] (“Territory Sales Agreement”).

The Parties Named Below Agree as follows:

This Sub-Distribution Agreement (“Agreement”) includes the Schedules attached and any other documents expressly incorporated by reference. As used in this Agreement, the definitions set out below and in Schedule 1 (Definitions) shall apply:

- Effective Date:** means [_____]
(Use a date no sooner than the date of the first signature below)
- Expiration Date:** means _____
- Products:** means the products set out in Schedule 2, as revised from time to time
- Territory:** means [_____]

	For SUB-DISTRIBUTOR (“you”)	For DISTRIBUTOR (“we”, “us”)
Parties	<i>[formal name and address of Sub-Distributor]</i>	<i>[formal name and address of Distributor]</i>
Signatures	Printed Name: Title: Date Signed:	Printed Name: Title: Date Signed:

Addresses for Notices: Notices under this Agreement shall be addressed as follows:

- for routine matters in the ordinary course of business:

By Hand or Mail	<i>[address of Distributor’s entity]</i> Attention: <i>[insert name]</i>
By Fax	<i>[fax number]</i> Attention: <i>[insert name]</i>
By Email	<i>[insert email address]</i>

- for other matters, same as above, plus copy to:

By Hand or Mail	
By Fax	
By Email	

A. COMMERCIAL TERMS

1. Term

1.1 This Agreement shall come into force on the Effective Date and continue in force for a period (“Term”) ending on the Expiration Date or any earlier termination in accordance with this Agreement.

1.2 This Agreement may be renewed or extended by a written agreement between the Parties on a form provided by us fixing a new Expiration Date and updating other provisions as the Parties may agree. If we continue to accept purchase orders from you or otherwise do business with you after the Expiration Date, this Agreement will continue to apply, but we may terminate at any time unless the Parties agree to renew or extend as stated above.

2. Appointment

2.1 We grant you the right to sell, market and promote the Products to customers within the Territory under the terms and conditions of this Agreement during the Term. We will supply Products to you on the terms and conditions contained in this Agreement and use reasonable efforts to fulfil purchase orders which we have accepted, in a timely manner. Acceptance of purchase orders is at our discretion.

2.2 You are appointed as our sub-distributor to buy from us and resell Products (“Sub-Distributor”). Subject to the terms of this Agreement, you shall be entitled to operate as our “Authorised Sub-Distributor” in the Territory.

3. Prices and Compensation

3.1 We shall sell you the Products at the Prices set forth in Schedule 3. In all cases, the Prices reported are exclusive of sales taxes, value added taxes and any other similar taxes that are lawfully payable in the Territory. If no price is set forth for a Product, we will inform you of the price in effect from time to time. We may at our discretion revise the Prices at any time by notice to you.

3.2 While acting as our Sub-Distributor, payment shall be made by you to us for the Products sold to you hereunder in accordance with the terms set out in Schedule 3 and the Terms and Conditions set out in Schedule 4. If no payment terms are detailed in Schedule 3, the Price shall be payable within thirty (30) days of the date of invoice or the date of delivery of the Products, whichever is the earlier.

4. Exclusivity

4.1 Any exclusivity is set forth in Schedule 2. If you commit to sell our Products exclusively, you and your Affiliates shall purchase the Products only from us and shall not directly or indirectly distribute, sell or manufacture any products which compete with the

Products during the Term. Any exceptions to this commitment must be noted in Schedule 2.

4.2 If Schedule 2 indicates that we commit to sell Products exclusively through you, we will:

4.2.1 refer to you all orders and enquiries received by us relating to the possible sale of such Products from potential customers resident in the Territory for delivery into the Territory; and

4.2.2 not appoint any other distributor or sales representative for such sales in the Territory; provided that we may sell or allow other parties to sell such Products in the Territory, if we pay you a reasonable commission, not to exceed ten percent (10%) of net sales, as full compensation for such sales, and the net invoice amount of such sales is credited to you in calculating whether you have achieved your Minimum Purchase Target hereunder. Our commitment to exclusivity applies only to products listed in Schedule 2 and may be terminated by us if **Company** or one of its Affiliates acquires a new business that sells similar products in the Territory.

5. Your Representatives

5.1 This Agreement reflects the Parties’ mutual trust that each will perform its obligations hereunder. On our request, you will give us full details, including names and addresses, of all of your Representatives used in connection with your performance under this Agreement. “Representative” of a person means a director, employee, sub-representative, dealer or agent of such person.

5.2 You will not use any Representative in connection with your performance under this Agreement if we object to the use thereof.

If you do use any Representative in connection with your performance under this Agreement, you shall be solely responsible for their performance and ensure that they comply in full with this Agreement in the same manner as you are required to comply, and for this purpose references in this Agreement to “you” will include your Representative.

5.3 At your request or with your consent, we may elect to accept orders directly from your Representatives or customers, if import and other regulations in the Territory so permit, in which case:

5.3.1. we may ship the Products directly to your Representatives or customers and payment may be made directly to us by them; and

5.3.2. You shall continue to be responsible for timely payment by them. (To minimize this payment risk, you may require the Representative or customer to provide an irrevocable sight letter of credit or similar assurance.)

6. Products

6.1 You will maintain an adequate and appropriate stock of Products to service the relevant market and satisfy customer demand in the Territory.

6.2 You will use reasonable efforts to ensure that older stock is sold before younger stock.

We reserve the right to add new Products or change or discontinue the sale of any Product at any time without prior notice to you.

If a Product is discontinued then you shall use all reasonable efforts to sell your remaining inventory of such Product.

7. Sales Efforts and Targets

7.1 You shall use all reasonable efforts to sell, market and promote the Products so as to satisfy the full potential market demand for the Products in the Territory.

7.2 You and your customers shall order no less than the Minimum Purchase Target of Products indicated in Schedule 2 during the first year of this Agreement, with the corresponding purchases to be completed in the ordinary course. For each subsequent year in which this Agreement remains in force (if any), the Minimum Purchase Target shall be increased by the purchase target increase indicated in Schedule 2, unless, prior to the beginning of the year, the Parties agree in writing to reset the Minimum Purchase Target for such year in a different manner. If you fail to achieve the Minimum Purchase Target, we will be entitled to terminate this Agreement or any of your exclusivity or other preferences hereunder on thirty (30) days' notice.

B. ADMINISTRATIVE MATTERS

8. General Obligations

You shall:

8.1 maintain a high level of customer service;

8.2 make clear, in all dealings with customers and others, whether you are acting as our Sub-Distributor or in some other capacity;

8.3 maintain an active and suitably trained sales force and be fully responsible for all sales support activities in the Territory;

8.4 abide by all commercial guidelines and policies specified by **Company** and us (provided that, when you are acting as Sub-Distributor, we will not restrict the price you may charge to your customers for the Products);

8.5 promptly comply with all other reasonable directions and requirements in relation to your performance under this Agreement as we may from time to time notify to you.

9. Literature

9.1 We shall furnish to you, at a nominal charge, reasonable quantities of English language material, i.e., catalogues, publicity brochures, instruction and information sheets and any other documents for promotion or use of the Products in the Territory.

9.2 You shall:

9.2.1 obtain from us or sources approved by **Company** all necessary sales, technical, advertising and promotional literature for use in the Territory;

9.2.2 approach us to take written approval from **Company** of any such literature not prepared by **Company**, prior to use, and if so requested assign all copyright therein to **Company**;

9.2.3 be solely responsible for the translation and (except where using our approved standard form) the accuracy of all such literature; and

9.2.4 ensure all literature conspicuously states that the Products were developed or manufactured (as appropriate) by **Company** and are **Company's** products.

9.3 Where necessary, you shall prepare and supply to each customer translations of all instructions for use and warnings relating to the Products.

10. Forecasts

10.1 You will give us periodic purchase forecasts in such form as we may reasonably request. These forecasts will not be binding unless otherwise stated.

11. Reports

In addition to the other reporting requirements in this Agreement, you shall:

11.1 keep us fully informed of the identities of the primary owners of your business and any change in the management or control of your business or any material adverse change in your business, financial condition or results of operations;

11.2 be familiar with all legal and business requirements in the Territory relating to or affecting your performance of this Agreement, including commercial, technical, labelling and safety requirements, and inform us or **Company** of them on request or in any case where such requirements are not fulfilled;

11.3 keep detailed records of technical faults and problems encountered by you and your customers in relation to the Products and provide us or **Company** from time to time as we may request with a report of such records and a comprehensive fault analysis extracted from such records;

11.4 promptly submit to us particulars of customer complaints received by you relating to the Products

and use reasonable efforts to evaluate such complaints and, where possible, assist customers to overcome all problems encountered in relation to the Products;

11.5 notify us without delay of violations of applicable law or regulations or Code of Conduct, and of any investigation, dispute or legal proceeding commenced or threatened against you or your customers that relate to our Products or your performance of this Agreement or otherwise may affect such performance;

11.6 upon our request, provide the following reports in a form reasonably acceptable to us:

11.6.1. prior to the start of each year, a business plan to assist in our market analysis and planning for the new year;

11.6.2. after the end of each month, a report of activities undertaken in relation to the sale of the Products in the Territory during that month;

11.6.3. basic financial information about your business (including balance sheet, statements of income and cash flow, if available), together with any related auditor's opinion;

11.6.4. information that may be relevant for our financial statements, including forward contracts made by you with your customers for the sale of Products; and

11.6.5. from time to time such other reports as we may reasonably request.

12. Consultations

You shall, upon our reasonable request:

12.1 make your Representatives available for training and technical support;

12.2 be available and make your Representatives available for meetings with **Company** at venues in the Territory; and

12.3 arrange visits and introductions for **Company** to meet users of Products in the Territory.

13. Quality and Product Tracking

13.1 You shall operate a quality system to the standards notified to you by us or **Company** in writing from time to time, which shall allow each Product to be fully traced and identified.

13.2 You shall establish and maintain a system of record keeping, including a register of lot numbers, catalogue numbers, individual product numbers and customer names and addresses, for all Products sold by you in order to assist us in the event of a Product recall. If the customer is not the end-user of the Products, you shall require the customer to maintain

a similar register, including the names and addresses of the end-users.

14. Payments

14.1 All payments by you to us under this Agreement should be made directly by you from a bank account

14.2 All payments to us under this Agreement shall be made in the currency invoiced, free from any restriction or condition, and without deduction or withholding on account of any other amount or claim, whether by way of set-off or otherwise and whether such amount or claim relates to this Agreement or otherwise. No payment shall be deemed to have been received until we have received full and cleared funds.

14.3 We shall be entitled to charge interest (both before and after judgment) on all overdue amounts and reasonable debt recovery costs at a rate of four percent (4%) per annum above the base rate of **[Named Bank]** from time to time (subject to any other mandatory percentage or limit that may be imposed by law), such interest to accrue on a daily basis from the due date for payment until receipt of payment by us.

15. Status of Parties; Taxes

15.1 You are appointed as an independent contractor. This Agreement does not create or establish any agency, partnership, franchise or similar relationship between the Parties, and neither Party is authorised to bind the other Party, contractually or otherwise, or to provide warranties or representations on behalf of the other Party. In addition, you should not hold yourself out to any third party as having the right to bind **Company** or us.

15.2 Where you are an individual, it is the intention of the Parties that you shall be self-employed and that nothing in this Agreement gives rise to a contract of employment between the Parties.

15.3 If a tax authority or other government agency considers that you are an employee of ours for the purposes of the calculation and collection of taxes, mandatory contributions or other levies, we shall be entitled to deduct, from any amounts payable to you, such levies as we are required to pay. Such deduction will not affect your status as an independent contractor for all other purposes.

15.4 You shall bear sole responsibility for all taxes, mandatory contributions and other levies which may be due from you in relation to this Agreement or your performance hereunder, and pay or reimburse us for any claim that may be asserted against us in respect thereof.

C. LEGAL & REGULATORY MATTERS

16. Compliance with Law and Policies

16.1 In carrying out your responsibilities under this Agreement, you shall act in an ethical manner and comply with: all applicable laws, including rules, regulations and orders of government authorities; **Company** Code of Conduct and applicable procedures; and any other industry codes that govern interactions with your customers in the Territory. You shall ensure that your Representatives act ethically and comply with all such laws and codes. You shall not act or fail to act in a way that would result in a violation by you or us of any applicable law. **Company** Code of Conduct and applicable procedures are available on **Company** website. You acknowledge receipt of those documents and familiarity with the relevant industry codes.

16.2 You shall not seek, accept, offer, give or permit any payment, service, gift or other value from or to any person or entity as a condition or result of doing business with you or us or **Company**, if doing so would be in violation of applicable law, including any law relating to bribery or corruption. You will take particular care to ensure the propriety of all interactions with Government Officials, Healthcare Professionals and other persons who might have authority or influence, directly or indirectly, over customers or any matters relating to Products, including the sale, marketing, promotion, importation, licensing or distribution thereof.

16.3 You will ensure that all of your Representatives engaged in business on our behalf are adequately trained to promote understanding and compliance with the requirements set forth herein, including the **Company** Code of Conduct. Training must be completed within 60 days after signing this Agreement for all existing Representatives (including employees, and others) who interact in any way with Healthcare Professionals or Government Officials and for new Representatives within 60 days of their engagement. If **Company** or we provide required training materials, you will ensure your Representatives are trained on them within such period as we reasonably specify. You will retain documentary records of all compliance training and keep them available for our and/or **Company**'s inspection.

16.4 You will use due care with regard to any interactions with Healthcare Professionals, including sponsored travel, grants and donations, to ensure compliance with **Company**'s Code of Conduct and applicable procedures thereunder. Any non-compliance may result in cancellation of the interaction and you will be fully responsible for all

associated costs, in addition to any other remedies under this Agreement.

16.5 You represent and warrant that:

16.5.1. any compensation paid by or to you in connection with this Agreement will be for legitimate, bona fide goods or services;

16.5.2. no value will be promised or provided to any other person or entity if any violation of applicable law could be expected to result;

16.5.3. you have fully disclosed all information pertaining to relationships between you or your Representatives and any Government Officials to us or **Company**;

16.5.4. neither you nor any of your Representatives, nor any other person controlled by you or your Representative, has been excluded or blacklisted from doing business by any governmental authority or industry association;

16.5.5. if you or any of your Representatives or owners has a role with a customer that creates a conflict of interest with your role under this Agreement, now or in the future, you have made and will make proper disclosure in accordance with the **Company** Code of Conduct and applicable procedures; and

16.5.6. you have responded and will respond completely and accurately to all questions we or **Company**, put to you in connection with due diligence reviews conducted by **Company** or us from time to time for purposes of this Agreement; and if any of the information you provide changes, or any representation or warranty ceases to be true, you will promptly inform us.

16.6 You authorize **Company** and us to make enquiries and obtain information about you and your Representatives from references you supply and any other source to verify the information you give us or **Company**, to determine reputation and credit standing and for other customary due diligence purposes. You agree to use reasonable efforts to obtain similar information and authorizations from your Representatives if required by us or **Company**.

16.7 You shall maintain for at least four (4) years following the Term, and make available to us and **Company** for inspection and audit at any time during normal business hours, books, records and accounts prepared in accordance with accepted accounting principles which accurately and completely reflect the nature of every transaction related to the Products and your compliance with this Agreement. Our or **Company**'s inspection under this Section will be to verify compliance, and at your request we will adopt safeguards to prevent use for other purposes.

16.8 You acknowledge that, in performing this Agreement, you are subject to trade controls imposed by various government agencies and under various laws which may prohibit the sale, export or diversion of products and technology to, or financial transactions with, certain countries or persons, such as those listed in Schedule 5. You shall not sell or transfer, directly or indirectly, any Product or related technology to, or have financial transactions with, any prohibited country or person in violation of applicable trade controls.

16.9 You will comply with any other requirements relating to export or trade regulation or other matters of which we give you notice to ensure that you and we remain in compliance with applicable law.

17. Regulatory Approvals

17.1 The Parties will cooperate to obtain necessary regulatory approvals to sell the Products in the Territory. The Distributor will, if required, seek all necessary co-operation from Company for such approvals. But neither Party will be obliged, in so doing, to conduct clinical trials or take extraordinary actions, except as the Parties may agree.

17.2 You shall (where necessary) register this Agreement with any appropriate governmental or regulatory authority and provide us with a copy of the certificate of registration.

17.3 You shall ensure that the Products and their packaging comply with the legal requirements regarding labelling applicable in the Territory, but, before altering any labels or other information on the Products or their packaging, you will approach us to obtain Company's written approval.

18. Product Warranty

18.1 Our warranty with regard to Products made by Company or us is set forth in Schedule 4 (Terms and Conditions of Sale), as such schedule may be supplemented or otherwise modified by us from time to time. ALL OTHER WARRANTIES FOR PRODUCTS MADE BY COMPANY OR US ARE EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW, whether oral or written, express or implied by law, trade custom or industry practice.

18.2 You shall be solely responsible for any representation or warranty given by you in addition to the warranties contained in this Agreement and not authorized by us in writing. You will submit to us full particulars of all claims made under each product warranty, together with your appraisal thereof.

18.3 Upon our request, you will fulfil our or Company's warranty obligations to customers in the Territory relating to Products. We will ensure that Company bears the cost of any replacement Products

or parts required under its warranty, unless you are responsible for the breach of warranty.

18.4 You acknowledge and agree that the Prices for the Products reflect the exclusions and limitations of liability set out in this Section and the Terms and Conditions of Sale in Schedule 4 hereto.

19. Integrity of Products

19.1 You shall not make any alteration or addition to the design, construction or specification of the Products without Company's prior written consent received through us, and you shall take no action that would make a Product defective or unsafe.

19.2 You shall comply with all requirements and follow our or Company's instructions with regard to the proper storage and handling of Products to avoid deterioration in the quality or appearance of the Products or their packaging or other adverse consequence.

19.3 You shall return on request any instruments, kits, tools, accessories, equipment and the like that have been loaned to you by us in the same condition as they were provided to you, normal wear and tear excepted.

20. Failure to Comply With Warranty

20.1 We will ensure that Company takes responsibility for Product to the extent set forth in Company's product warranty.

20.2 You shall immediately notify us (and where such notice is oral, confirm in writing as soon as practicable) if you have any reason to believe that:

20.2.1. the Product is unsafe to any purchaser or user or causes an unexpected risk to a user (in which case you shall not sell it) as a result of the failure to comply with the warranty; or

20.2.2. there is any error or omission in Product instructions that may expose a user to any unexpected risk.

20.3 You shall only be entitled to claim in relation to the failure to comply with the warranty which are:

20.3.1. apparent on visual inspection at the time of delivery, if you notify us within seven (07) days of delivery of the Product to you; or

20.3.2. not apparent on such inspection, if you notify us as soon as practicable after the defect is discovered and before the warranty expires.

In either event, you must give Company an opportunity to inspect the Product and investigate any complaint before any use of or alteration to the Product. You shall not be entitled to claim in respect of any Product repaired or altered without prior written consent received through us, nor in respect of

any defect arising by reason of ordinary wear and tear or damage due to accident, neglect or misuse.

20.4 You shall use all reasonable efforts to cooperate with us and Company in any remedial action we or Company may request and will:

20.4.1. comply with our or Company's directions to label the relevant Products in an appropriate manner;

20.4.2. if directed by us or Company, cease further supply of the relevant Products and return them to us; and

20.4.3. not admit liability or attempt to settle any claim in relation to such defect without Company's prior written consent received through us.

20.5 Company will determine, as per its discretion, whether a recall is appropriate in respect of an actual or alleged Product defect, as well as whether recalled Products can be repaired or must be discarded, whether they should be returned for refund or credit, and all other terms of any recall. If we notify you of a recall, you will cooperate to carry out our instructions, and (unless it results from your breach of this Agreement) we will be responsible for the associated expenses.

21. Intellectual Property; Confidentiality

21.1 All Intellectual Property rights relating to the Products or any component thereof or related packaging are hereby assigned to and vested with Company. You shall cooperate with us and Company to acquire, maintain and protect all such rights.

21.2 You shall not challenge the validity or ownership of any of Company's Intellectual Property rights relating to the Products. You shall take no action that may harm our or Company's reputation or goodwill or the ownership, validity, scope or enforceability of Company's Intellectual Property. Except as provided herein, nothing in this Agreement grants any right to you in connection with our Intellectual Property.

21.3 You shall notify us and Company of any improvements or inventions developed or discovered by or for you relating to the Products or the manufacture or use of the Products and permit Company and its licensees to make full use thereof (royalty free) in connection with the manufacture, use and sale of Products in any part of the world. If you obtain a patent on such an invention without Company's help in the invention or patent prosecution, then Company shall consider, in good faith, purchasing the patent from you, or taking a license, for a reasonable amount to be agreed.

21.4 You shall affix or maintain such Intellectual Property notices to the Products or associated

packaging or advertising as we request. You shall comply with Company's directions regarding the form and manner of the application of the Trade Marks. You shall not use any mark, name or other term that is confusingly similar to any of the Trade Marks or, without our prior written consent, use in relation to the Products any trademarks other than the Trade Marks.

21.5 You shall not during the Term of this Agreement or at any time thereafter, without Company's prior written consent:

21.5.1. register or obtain any proprietary rights in any part of the world over any Trade Mark or any of our product designations (whether registered or not); or

21.5.2. disclose or use any of our trade secrets or other confidential or proprietary information for any purpose other than performance of your obligations under this Agreement.

22. Infringement

22.1 You shall notify us promptly of any actual or suspected infringement of any Intellectual Property rights relating to the Products and take such action thereupon only as we direct. Company shall have the sole option, but not the obligation, to sue or take other action against any alleged infringers, and you shall cooperate as we or Company may require. You shall have no rights against us or Company as a result of our refusal to sue or settlement of any claim. We represents that Company agrees to bear all expenses for actions brought by Company and any proceeds obtained from such actions shall be Company's sole responsibility and property, regardless of which Party is named in the action.

22.2 We represent that Company will defend you from any lawsuit brought against you by a third party and indemnify you against any damages awarded therein, to the extent such lawsuit and damages are based upon a claim that the sale or use by you of any Product infringes such party's Intellectual Property rights, provided that:

22.2.1. your activity was pursuant to and in accordance with the terms of this Agreement;

22.2.2. the claim does not arise out of any modifications you have made to the Products or any Trade Mark;

22.2.3. the claim is not based upon a combination of the Products with a third party product unless such claim would have existed in the absence of such combination;

22.2.4. you shall notify us in writing of such claim within three (3) days of it being notified to you and give Company immediate and complete control of it

and do not by any act or omission prejudice our defence or settlement; and

22.2.5. you shall give us or Company such assistance (at our expense) as we may reasonably require to settle or oppose any such claim.

22.3 If such infringement occurs or is alleged, Company may at its sole option and expense:

22.3.1. procure for you the right to continue to use the relevant Intellectual Property;

22.3.2. modify the relevant Product so that the same becomes non-infringing; or

22.3.3. replace the relevant Product.

If Company is unable or unwilling to alter the Product to avoid infringement in any part of the Territory, then we may elect to remove such infringing Product from the scope of this Agreement for those locations where infringement exists and we shall, if requested by you, repurchase from you all stock of infringing Products held by you at such time in such locations. The repurchase shall be at the price originally charged to you, and fulfilment of our obligations under this Section shall be our sole liability to you in respect of such infringement.

23. Force Majeure

23.1 Neither Party shall be liable to the other for any default under this Agreement (other than payment of money) where the same is due to causes beyond the control of the Party in default (“Force Majeure”), provided that the Party seeking to rely on this provision shall give written notice to the other containing full particulars of the causes and such Party’s efforts to overcome them. The foregoing shall not excuse any failure to pay money when due.

23.2 If any default due to Force Majeure shall continue for more than two (2) months, the other Party shall be entitled to terminate this Agreement by one (1) month’s notice in writing.

24. Breach of Agreement

24.1 In the event of breach of this Agreement by a Party (including breach by its Representatives), the breaching Party will indemnify the other in accordance with applicable law against any loss, liability or expense resulting from the breach.

24.2 In the event of breach by you, we shall be entitled, without prejudice to any other right or remedy, to suspend or cancel any further deliveries under this Agreement and any other contracts then current between us and you, and require prompt payment of all amounts owed to us under such contracts.

24.3 Except as expressly provided in this Agreement and to the maximum extent permitted by applicable

law, we will have no liability for lost profits or other consequential damages, and our liability to you in connection with this Agreement (under any theory and of any kind) shall in no event exceed twenty five percent (25%) of the aggregate net sales of the Products sold by us with your help under this Agreement in the most recent twelve (12) months, which amount the Parties have agreed represents a fair and reasonable cap on our potential liability. Nothing herein shall limit liability to a greater extent than is permitted by applicable law.

D. OTHER MATTERS

25. Termination

25.1 Either Party may terminate this Agreement by giving six (6) months’ notice in writing to the other Party at any time.

25.2 One Party may terminate this Agreement by notice to the other Party as set forth below:

25.2.1 if the other fails to pay an amount when due, if not cured within fourteen (14) days after notice;

25.2.2 upon material breach by the other Party of any other term of this Agreement, if such breach is not cured within thirty (30) days after notice, is not capable of being so cured, or repeats a prior breach; or

25.2.3 upon commencement of insolvency, receivership or similar proceedings, or cessation of business, by the other Party.

25.3 We shall have the right to terminate this Agreement forthwith on notice if you breach Section 16 (Compliance with Law and Policies) in any material respect or undergo a Change in Control. This Agreement may also be terminated as set forth in Sections 7 (Sales Efforts and Targets) and 23 (Force Majeure).

25.4 In addition, we or Company shall have the right from time to time (but not more than once per year) to update our due diligence review with regard to you and your Representatives and your suitability to act on our behalf under this Agreement in compliance with Section 16. If we are not satisfied with results of that review, then we may terminate this Agreement and any related contracts on thirty (30) days’ notice to you.

25.5 Termination shall not affect rights or obligations accrued prior to termination or those stated to survive termination in accordance with this Agreement.

25.6 We shall have the option to repurchase from you upon termination all or part of any stocks of the Products then held by you and not required to fulfil orders from customers accepted in the ordinary course prior to termination. The repurchase prices will generally be the Prices you originally paid for the

Product, for those that are in good condition and not excess or obsolete, and otherwise such lower amounts as the Parties may agree. You may sell stocks of the Products if we do not exercise our right of repurchase within forty five (45) days after termination and for those purposes and to that extent the provisions of this Agreement shall continue in effect.

25.7 You shall co-operate with us and our designee to ensure the smooth handover of your responsibilities under this Agreement, including providing all records, customer lists, details of all Products held on a consignment basis at a third party's premises and any other information we request, and we shall pay or reimburse you for the reasonable out-of-pocket expenses relating to your cooperation.

25.8 If we so request, you shall assign to us or Company or our designee, as instructed by us, any order or tender for the Products to be fulfilled after termination. If we do not make such request or such order or tender cannot be assigned, then you will fulfil such order or tender and we will provide you with the Products required in order to do so on terms to be mutually agreed between you and us.

25.9 You shall assign to us or Company or our designee, as instructed by us, any import licences or approvals or other similar authorisations which may be held in your own name in connection with the matters described in this Agreement, and, if assignment is not permitted, then you shall cooperate with us to make alternative arrangements in order to achieve the same effect and result, and we shall pay or reimburse you for the reasonable out-of-pocket expenses relating to your cooperation.

25.10 Within fifteen (15) days after termination, you shall return to us or otherwise dispose of in accordance with our instructions all sales and technical literature, other documents, information, samples, models and equipment supplied to you in connection with this Agreement, together with all copies, extracts and other items in your possession, except in so far as the same are required by you to fulfil remaining orders or tenders in accordance with this Agreement (in which case they shall be returned to us promptly when no longer needed).

25.11 You shall not be entitled to any claims, compensation or damages arising out of the valid termination of this Agreement except as otherwise provided in this Agreement. It is understood that any goodwill associated with the sale of the Products in the Territory belongs to us.

26. Assignment; Affiliates

26.1 Neither Party shall assign or otherwise transfer this Agreement or any of its rights or obligations

hereunder to any third party without the prior written consent of the other.

26.2

26.3 Neither Party will do indirectly, through an Affiliate or otherwise, anything that this Agreement would prohibit such Party from doing directly.

27. Governing Law and Dispute Resolution

27.1 This Agreement and all rights and obligations arising in connection with this Agreement shall be governed by and interpreted in accordance with the laws of **Country**.

27.2 If any provision of this Agreement is found by any court, arbitrator or other authority of competent jurisdiction to be invalid or unenforceable or otherwise contribute to the breach of any applicable law, that provision shall, to the extent required, be deemed amended with the minimum modification necessary to make it valid and enforceable, and the validity and enforceability of the other provisions of this agreement shall not be affected.

28. Notices

28.1 Notices and other communications between us shall be in the English language (except for routine matters in the ordinary course of business, which communications may be in the language commonly used between the Parties in the Territory) and shall be deemed to be validly given when delivered in the manner and to the address specified at the beginning of this Agreement. Either Party may change its address by giving notice in writing to the other party.

28.2 You will be deemed to have notice of all information we may post on any distributor website to which we direct your attention, within a reasonable time after posting.

29. Miscellaneous

29.1 The Parties represent and warrant that their respective signatories to this Agreement are their lawful agents and have requisite power and authority to execute and deliver this Agreement.

29.2 You represent and warrant that your entry into this Agreement and the performance of your obligations hereunder will not result in the breach of any agreement or obligation between you and a third party.

29.3 Each Party will bear its own expenses in performing its obligations under this Agreement, except as may be otherwise expressly provided.

29.4 If we provide under this Agreement certain products not made by Company and not branded with **Company's** Trade Marks, then the warranty, intellectual property, infringement and other assurances in this Agreement with regard to such

Products shall not apply and we will use reasonable efforts to cooperate with you to obtain similar assurances from the manufacturer of such Products.

29.5 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior agreements regarding the subject matter of this Agreement.

29.6 No waiver or amendment of this Agreement shall bind a Party unless in writing and signed by an authorised person of that Party.

29.7 This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart signature page of this Agreement by e-mail (PDF) or telecopy shall be as effective as delivery of a manually executed counterpart.

Schedule 1
to Sub-Distribution Agreement

Definitions and Rules of Interpretation

Unless the context requires otherwise, the following words and expressions when used in this Agreement shall have the following meanings:

Affiliate means, with respect to any person (which term is used broadly to include companies and other entities as well as individuals), any other person directly or indirectly controlling, controlled by, or under common control with such person. The term will also include immediate family members of a person and the Affiliates of such family members.

Change of Control shall occur with regard to a person if another person who Controls such person ceases to do so, or if a new person acquires Control of such person.

Code of Conduct means the Code of Conduct adopted by Company, as in effect (and available on Company's website) from time to time.

Conditions means our terms and conditions of sale with regard to each Product covered by this Agreement, as they may be in effect and notified by us to Sub-Distributor from time to time. In the absence of other applicable Conditions, those set forth in Schedule 4 will apply.

Control means the ability of a person to direct the affairs, or have the primary benefits of ownership, of another person, whether by ownership of shares, contract or otherwise.

Government Official has the meaning set forth in the Code of Conduct.

Healthcare Professional or Healthcare Provider or HCP has the meaning set forth in the Code of Conduct.

Intellectual Property means any patents, utility models, registered designs, trade marks, service marks, applications for any of the foregoing (including continuations, continuations-in-part and divisional applications), the rights to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs, copyrights, design rights, semi-conductor topography rights, moral rights, database rights, publication rights, rights in know-how, trade secrets and confidential information and all other forms of intellectual property rights that have similar effect to any of the foregoing which may exist anywhere in the world.

Party means any party to this Agreement individually, and **Parties** refers to all of the parties to this Agreement collectively. A Party shall include all permitted assigns of the Party in question.

Price for a Product means the price for such Product as set forth in Schedule 3, subject to determination or revision by us as set forth in Section 3 of this Agreement.

Representative of a person has the meaning set forth in Section 5.1 and includes a director, employee, sub-representative, dealer or agent of such person.

Trade Marks means such registered or unregistered trade marks or trade names as are used by Company on or in relation to the Products at any time during this Agreement, including "Smith & Nephew" and all derivative marks and names.

Certain other terms are defined elsewhere in this Agreement.

Any headings to Sections and Schedules are for convenience only and shall not affect the meaning of this Agreement.

In the event of any inconsistency or ambiguity between provisions of the following documents, the order of precedence shall be as follows (unless agreed otherwise by the Parties in writing):

- Schedule 2;
- Sections 1 (Term) to 29 (Miscellaneous) and Schedule 1;
- the Conditions;
- any other Schedule;
- any other documents expressly incorporated by reference.

Schedule 2
to Sub-Distribution Agreement

Products

Product Description	Exclusive?*** (Sub-Distributor, Distributor or Both)	Minimum Purchase Targets for first year (see Section 7)	Purchase Target Increase (for later years)

* See Section 2, Appointment

*** See Section 4, Exclusivity. “Exclusive” for a product may apply to:

1. **Sub-Distributor**, in which case the Sub-Distributor is restricted with regard to competing products;
2. **Distributor**, in which case Distributor is restricted with regard to other distributors or sales representatives in the Territory; or
3. **Both**, in which case both 1 and 2 will apply.

Other changes to this Agreement (Sections 1 to 29) must be expressly stated below:

Schedule 3
to Sub-Distribution Agreement

Prices and Commission Payment Terms

[Specify pricing mechanics and compensation of third party as Sub-Distributor]

Example of pricing table for use when appointing a Sub-Distributor (buy/sell):

<u>Product</u>	<u>Price in [currency]</u>	<u>Unit size</u>
<i>[x]</i>	<i>[a]</i>	<i>[i]</i>
<i>[y]</i>	<i>[b]</i>	<i>[ii]</i>

[SPECIFY CURRENCY; CONSIDER PREPAYMENT; COD OR L.O.C.]

Schedule 4
to Sub-Distribution Agreement

Terms and Conditions of Sale (“Conditions”)

These Terms and Conditions shall apply to purchase orders for Products submitted by the Sub-Distributor to the extent Distributor has not provided to the Sub-Distributor other terms and conditions to govern sales of such Products under this Agreement.

ORDERS

1. You shall from time to time place orders for such Products as you may require by issuing to us a purchase order.
2. Each purchase order shall contain the following information or such other information as may be agreed between the Parties - order number; issue date of the order; contact person; order line; Product number with description; quantity; price of each Product (which shall not be less than the Price set forth in Schedule 3); requested delivery date and delivery address.
3. You shall be responsible for ensuring the accuracy of each purchase order.
4. We may, acting reasonably, be entitled to reject a purchase order for reasons including, but not limited to, if a purchase order does not comply with the required format, you are late in payment in respect of any previous purchase order or the purchase order is for quantities of Product in excess of those estimated in accordance with this Agreement.

DELIVERY

5. Time of delivery shall not be of the essence. Stated delivery times are an estimate only. We shall not be liable for any loss (including loss of profit), liability or expense caused directly or indirectly by any delay in the delivery of the Products (unless we have failed to use reasonable efforts to do so, in which case we may be liable subject to the limitations of this Agreement).
6. If you refuse or fail to take delivery of the Products within your normal working hours on the date of delivery, or if we are unable to deliver the Products on time because you have not provided appropriate instructions, documents, licences or authorisations, we may store the Products and you shall, in addition to the Price, pay all related costs and expenses (including the costs for storage and insurance and additional delivery costs incurred by us). If you fail to take delivery of the Products for fourteen (14) days following the date scheduled, we may rescind the Purchase Order and sell the Products to a third party (if possible) or return them to Company with all storage and shipping charges to be paid by you. In either event, you will be responsible for any damages we may incur.
7. We shall use our reasonable endeavours to comply with your reasonable requests to postpone delivery of the Products, but we shall be under no obligation to do so.
8. Unless specifically agreed between the Parties, delivery of the Products shall be on a FCA Named Place basis.
9. If Products are delivered in instalments, each delivery shall constitute a separate contract. Any failure by us to deliver in accordance with these Conditions or any claim by you in respect of any one or more of the deliveries shall not entitle you to treat the transaction as a whole as repudiated.
10. We reserve the right, at our sole option, to cancel or withhold the delivery of any Products, in whole or in part:
 - until receipt of a satisfactory credit reference from you; or
 - where the supply of such Products would exceed any credit limit which we may, in our discretion, have granted to you; or
 - where we are entitled to terminate this Agreement.
11. We give no guarantee of the exact quantity of Products delivered, but in the event that the quantity of Products delivered does not correspond with the quantity (including any relevant tolerances) stated on the purchase order, you shall only be liable to pay for the amount actually delivered, in the case of under-

delivery or for the Price in the event of over-delivery (subject to allowing us to collect the surplus Products).

LIEN

12. The owner of the Product shall retain title to all Products and have a lien (to the extent permitted by law) on all Products delivered to you until payment for the Products delivered to you has been received by us in full.

WARRANTY

We will pass through to you Product warranties received by us from Company, pursuant to the Territory Sale Agreement:

Schedule 5
to Sub-Distribution Agreement

Trade Controls

Current lists of countries and persons prohibited or restricted by the United States are available at:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

Please note that the countries and persons in respect of which trade controls apply are subject to revision by government authorities from time to time. To ensure compliance throughout the Term, you must diligently check the above internet link and other applicable laws from time to time.

Sub-Distribution Agreement
Form of Guaranty by Sub-Distributor Principals

The undersigned hereby unconditionally and irrevocably guarantee (jointly and severally, if more than one guarantor) to Distributor the full performance by party named below (“Sub-Distributor”) of all of its obligations under the Sub-Distribution Agreement between Distributor and the Sub-Distributor, as such Agreement may be amended from time to time. Furthermore, the undersigned agree to comply with the covenants in such Agreement applicable to Affiliates of the Sub-Distributor, as if the undersigned were an Affiliate of the Sub-Distributor.

The enforceability of this guaranty shall not be affected by any failure of the undersigned to consent to an amendment or waiver of the Sub-Distributor Agreement, any insolvency of the Sub-Distributor or any other circumstance whatsoever.

The Sub-Distributor is: _____

By _____

Name:

Date: