

NON-EXCLUSIVE CLINICAL PARTNER AND RESELLER AGREEMENT

THIS AGREEMENT is entered into as of [] (“**Effective Date**”) by and between (the “**Agreement**”):

AETHER BIOMEDICAL sp. z o.o. with its registered office in Poznan, ul. Królowej Jadwigi 43, 61-871 Poznan, entered into the register of entrepreneurs of the National Court Register Poznan – Nowe Miasto i Wilda, VIII Commercial Division of the National Court Register under KRS No.: 0000755184, REGON: 381661137, NIP: 7831791083, share capital 64.750 zł (fully paid), represented by Dhruv Agrawal – President of the Management Board,

hereinafter referred to as „**Aether**”

and

[] incorporated under the laws of [] as a [] company, having its registered office in [], entered in the register [], having tax identification number: [], represented by:

[] - []

hereinafter referred to as the „**Partner**”

hereinafter referred to collectively as „**Parties**” and separately as the „**Party**”.

1. DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise expressly provided to the contrary in this Agreement, all capitalized terms used herein shall have their respective meanings set forth below:

Business Day	means any day other than a Saturday, Sunday or a bank or public holiday in Poland or in the Territory.
Delivery	shall have meaning set out in Clause 5.1.
Delivery Point	shall have meaning set out in Clause 5.1.
Instruction for Use	means instruction for use of the Product by Qualified Personnel available at Aether’s website https://www.aetherbiomedical.com/product . Aether may update or modify the Instruction for Use from time-to-time.
MSRP	means manufacturer suggested retail price.
Order	shall mean order for Product(s) made by Partner hereunder.
Ordered Products	shall mean Product(s) ordered by Partner under Order accepted by Aether.
Patient	means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, or maintenance health services from Partner.
Price	means the price payable by the Partner to Aether in consideration of the sale and supply of Products pursuant to the terms of this Agreement and each of the Orders.
Product	means product(s) of Aether.
Product List	means a list of Products and its pricing available for the Partner, current copy of which is attached as Schedule 1. Aether may add to, delete from, or otherwise modify the Products on the “ Product List ” at any time.
Qualified Personnel	mean individuals engaged in the delivery of a medical or health care service who have been licensed, certified, or otherwise properly qualified under the laws applicable to the Territory and applicable to that particular service.
Term	means the term of this Agreement, which shall commence on the Effective Date.
Terms and Conditions	means the insert to be included in Partner’s documentation intended for Patients setting forth the terms and conditions for use of the Product available

at Aether's website: [https://7842652.fs1.hubspotusercontent-na1.net/hubfs/7842652/PDF%20Resources/MSD-12%20Aether_Gen\[...\]%20collaboration%20with%20clinical%20partners.pdf](https://7842652.fs1.hubspotusercontent-na1.net/hubfs/7842652/PDF%20Resources/MSD-12%20Aether_Gen[...]%20collaboration%20with%20clinical%20partners.pdf). Aether may update or modify the Terms and Conditions from time to time.

Territory

means geographic territory of [•].

User Manual

means the insert to be included in Partner's documentation intended for Patients setting forth the manual for use of the Product available at Aether's website: <https://www.aetherbiomedical.com/downloads>. Aether may update or modify the User Manual from time to time.

Warranty

shall have meaning set out in Clause 7.1.

- 1.2 The Schedules to this Agreement shall for all purposes form part of this Agreement. In case of amendment or update of a Schedule from time to time, upon amendment or update of such Schedule it shall replace the former Schedule.

2. APPOINTMENT AS RESELLER

- 2.1 Subject to the terms and conditions of this Agreement, Aether hereby appoints Partner as the non-exclusive, authorized reseller of the Products to the Patients in the Territory and Partner accepts such appointment.
- 2.2 Partner shall be entitled to sell Products in the course of providing medical services to its Patients.
- 2.3 The Partner is solely responsible for medical services provided to the Patient, including but not limited to the selection of appropriate medical products for Patients within the implemented therapy or treatment procedure and the assessment of the usefulness and suitability of any medical products (including Product) for Patient.
- 2.4 Partner shall not obtain the Products for resale from any person or entity other than Aether.
- 2.5 Partner shall sell, offer for sale and promote only the accepted by Aether (in writing or via e-mail) supplies, spare parts, components and other peripheral equipment for use in conjunction with the Product.
- 2.6 Aether reserves the right to discontinue or modify the Products, modify the Product specifications, or replace the Products with other Aether or third party products in its sole discretion, provided that, except as required by law, any such discontinuations, modifications, or replacements will not apply to Products that are subject to an outstanding purchase Order accepted by Aether.
- 2.7 The relationship of Aether and Partner established by this Agreement is that of independent contractors.
- 2.8 Partner shall not appoint or use any third parties to market, sell or distribute the Products without prior written consent of Aether.

3. GENERAL TERMS OF COLLABORATION

General terms of collaboration between the Parties under this Agreement and general responsibilities of the Parties are available at Aether's website: <https://www.aetherbiomedical.com/terms-of-conditions> (the "**General Terms**"). The General Terms shall for all purposes form part of this Agreement.

4. PRICES

- 4.1 Prices paid by Partner to Aether for Products shall be DDP (*Delivery Duty Paid – Incoterms 2020*)/DAP (*Delivered At Place*) to Delivery Point and shall be net prices and initially be as set forth in the Product List.

- 4.2 Aether shall have the right, at any time, to change, alter, or amend Prices upon written notice. New Prices shall become effective after 30 (thirty) days from the notice being served to the Partner.
- 4.3 Prices include shipping and handling charges as well as packing in Aether's standard.
- 4.4 Price does not include any federal, state or local taxes that may be applicable to the Products in the Territory or otherwise. Aether shall not be responsible for any taxes on the sale of the Products by Partner to Patients or Partner's customers. Pricing per this Agreement represents the net cash amount to be received by Aether. Accordingly, any fees indicated herein shall be exclusive of Value Added Tax, if applicable, or other sales tax or other governmental charges of such kind at the rate prescribed by law which shall be specified in the applicable invoice. If Aether has an obligation to collect, remit or have withheld any such taxes, duties or fees, an amount shall be added to Partner invoice and paid by Partner such that the net amount of cash received by Manufacturer equals the pricing per this Agreement.
- 4.5 Partner's sole remuneration for performing its responsibilities under this Agreement shall be the payments it receives from its Patients. Aether shall not reimburse the Partner for any costs incurred by the Partner in connection to this Agreement
- 4.6 Partner shall establish the prices charged to Patients at Partner's sole discretion, however Product List will include MSRP for each Product. Charging lower price than the Product's MSRP indicated in then-current Product List shall not affect the Price to be paid by Partner to Aether.
- 4.7 No failure to collect payment from any Patient shall relieve Partner of its obligation to pay Aether under this Agreement.

5. DELIVERY

- 5.1 Ordered Products will be supplied on a DDP (Delivery Duty Paid – Incoterms 2020)/DAP (Delivered At Place) basis to the delivery point agreed between Parties ("**Delivery Point**") in standard package ("**Delivery**"). Any expenses related to Partner's special packing requests shall be borne by Partner.
- 5.2 Other terms and conditions of the Delivery are included in the General Terms.

6. PAYMENT

- 6.1 The payment terms are: []
- 6.2 If any sum payable under this Agreement is not paid when due then, without prejudice to the Aether's other rights in this Agreement Aether will be entitled to suspend all future Deliveries of ordered Products and/or performance of the services pursuant to the terms of this Agreement until the outstanding amount has been received.

7. WARRANTY AND DISCLAIMER

- 7.1 Subject to provision of applicable laws and regulations, Aether does not provide any warranty protection to end-users of the Products (Patients) other than warranty under terms and conditions set out in Terms and Conditions ("**Warranty**").
- 7.2 Aether's sole liability under Warranty is towards such Patient and not the Partner, Partner shall have no claims against Aether under Warranty.
- 7.3 Other terms and conditions of the Warranty are included in the General Terms.

8. LIMITATIONS OF LIABILITY AND INDEMNITY

- 8.1 Partner will, at its expense, defend Aether from or settle any claim, proceeding, or suit from or against any claim by a third party to the extent that it relates to or results from any action, omission to act, representation or warranty given by the Partner. The Partner shall reimburse Aether for any costs related to such claims, proceedings or suits including paid damages,

proceedings costs and legal fees. In particular Partner shall indemnify Aether from any claim, proceeding, or suit from or against any claim by a third party arising out of:

- (a) services provided to the Patient by the Partner,
- (b) a selection of the Patient's treatment method using the Product,
- (c) a selection of the Product as a technical solution within the treatment method provided to Patient,
- (d) an assessment of the usefulness and suitability of Product for Patient,
- (e) non-performance or improper performance of the Partner's obligations towards the Patient under this Agreement.

8.2 If any Product is found defective or deficient as a result of acts or omissions of Partner, Partner shall upon notification by Patient or Aether (i) correct or cure the defect (or defend the asserted defect to the Patient in good faith to the reasonable satisfaction of Aether) to the reasonable satisfaction of Patient within 14 (fourteen) days or such time period allowed by Aether, or (ii) if such defect cannot be cured within such time period, Partner shall purchase new Product from Aether and replace Patient's affected Product with the new one at its own cost, and (iii) hold harmless and indemnify Aether pursuant to Clause 8.1.

8.3 Other terms and conditions of the liability and indemnity are included in the General Terms.

9. TERM AND TERMINATION

9.1 This Agreement shall commence on the Effective Date and continue for 12 (twelve) months from the Effective Date. This Agreement renews automatically for successive 12 (twelve) months' periods at the expiration of the initial Term, unless terminated by either Party by notice given to the other at no sooner than but within 90 (ninety) days prior to its termination date.

9.2 Notwithstanding to the foregoing, either Party may terminate this Agreement at any time by giving 30 (thirty) days' notice to the other Party.

9.3 Aether may terminate this Agreement immediately by giving notice to the Partner if:

- (a) Partner is in material breach of any of the terms of this Agreement;
- (b) any payment due from Partner is 20 (twenty) Business Days or more past due.

9.4 Notice on termination of the Agreement shall be made in writing or via e-mail.

9.5 Following termination of this Agreement Partner shall cease its use of all Trademarks, URLs, domain names, and other brand identifiers of Aether and shall cease representing to any third party that it is affiliated in any way with Aether.

10. GENERAL

10.1 **Amendment.** No amendment of this Agreement shall be valid unless it is in a document form within the meaning of Polish law. The Parties hereby agree that the electronic signature (e.g. DocuSign) or scans (electronic copies) of signed text of the Agreement or any amendment to this Agreement signed by e-mail or fax, shall be sufficient to comply with this document-form requirement.

10.2 **Entire agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any previous agreement or arrangement between the Parties or any of them relating to the subject matter hereof.

10.3 **Severance.** If any provision of this Agreement is found to be illegal, invalid or unenforceable, but would be legal, valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification(s) and/or deletions(s) as may be necessary to make it valid, but such modification(s) and/or deletions(s) shall only apply in the jurisdiction in question and not in any other jurisdictions.

10.4 **No assignment.** Partner shall not assign or otherwise dispose of any of its rights, obligations, or interests in this Agreement, without prior written consent of Aether.

10.5 **Counterparts.** This Agreement was made in 2 (two) counterparts – 1 (one) for each Party.

11. NOTICES

11.1 Any notice or other communication given under the Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by delivering it personally or sent by prepaid registered post or via email to the address and for the attention of the relevant Party set out in Clause 11.2 (or as otherwise notified by that Party under the Agreement). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of registered post, at the time of delivery; and
- (c) in the case of email, at the time of transmission.

11.2 The addresses of the Parties for the purposes hereof are:

(a) **Partner:**

Address: [●],

e-mail: [●]

(b) **Aether:**

Address: ul. Królowej Jadwigi 43, 61-871 Poznań,

for the attention of: Dhruv Agrawal – President of Management Board

e-mail: dhruv@aetherbiomedical.com

11.3 Either Party may change its address for the purpose of receiving notices or demands as herein provided by a notice given in the manner aforesaid to the other Party.

11.4 The Parties agree that the non-receipt of registered post or other correspondence with recorded delivery by the recipient, served at the relevant address of the Party, shall be deemed to be received on the date of delivery to the address of the Party set out in Clause 11.2.

12. GOVERNING LAW AND JURISDICTION

12.1 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of Poland without giving effect to any of the conflict of law principles or rules thereof.

12.2 **Exclusion of CISG.** The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.3 **Dispute resolution and jurisdiction.** Each Party irrevocably agrees to submit all disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of Poland having jurisdiction over Aether’s registered office.

Partner (title and signature):

Aether (title and signature):

SCHEDULE 1 – PRODUCT LIST:

No.	Product	Price	MSRP
1.	Product “Zeus” – left hand spec.		
2.	Product “Zeus” - right hand spec.		

Forms:

FRM-30 Demo Unit Ordering Form

FRM-15 Purchase Order Form US

FRM- 31 Purchase Order Form EU/Non-EU