
NON-EXCLUSIVE DISTRIBUTION AGREEMENT

concluded by and between:

AETHER BIOMEDICAL SP. Z O.O.

and

[•]

THIS AGREEMENT is entered into as of [] ("Effective Date") by and between:

AETHER BIOMEDICAL sp. z o.o. with its registered office in Poznan, ul. Mostowa 11, 61-854 Poznan, entered into the register of entrepreneurs of the National Court Register Poznan – Nowe Miasto and Wilda, VIII Commercial Division of the National Court Register under KRS No.: 0000755184, REGON: 381661137, NIP: 7831791083, 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 „**Distributor**”

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

WHEREAS, Distributor is in the business of distribution and reselling of bionic limb prosthesis, exoskeletons and associated components including but not limited to control systems for prosthetic limbs and sensory feedback systems.

WHEREAS, Distributor desires to distribute certain Aether products to the Medical Centers in the Territory, as these terms are defined below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and intending to be legally bound by this Agreement, the Parties agree as follows:

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:

Agreement	means this non-exclusive distribution agreement.
Authorized Persons	mean individuals authorized by the Distributor to place Orders hereunder. A list of “ Authorized Persons ” is attached as Schedule 4.
Authorized Resellers	means a third party meeting the criteria to act as a reseller of the Product for Distributor in accordance with Clause 2.9.
Business Day	means any day other than a Saturday, Sunday or a bank or public holiday in Poland or in the Territory.
Certificate	means a certificate issued by Aether in writing or in electronic form, evidencing the a given third party is a party of Certified Partnership Program.
Certified Partnership Program	means the professional procedures maintained by Aether that are designed to train, qualify, educate and monitor third-party partners of Aether (inter alia distributors, clinical partners etc.) based upon qualification parameters set by Aether; being a party of “ Certified Partnership Program ” shall be evidenced solely by Certificate issued by Aether.
Confidential Information	shall have meaning set out in Clause 10.1.

Delivery	shall have meaning set out in Clause 6.1.
Delivery Point	shall have meaning set out in Clause 6.1.
General Terms	shall have meaning set out in Clause 3.1.
Instruction for Use	means instruction for use of the Product by Qualified Personnel available at Aether's website: https://www.aetherbiomedical.com/downloads . Aether may update or modify the Instruction for Use from time to time.
Medical Center(s)	means a healthcare facility that provides medical services to Patients and is authorized by Distributor under this Agreement to resale Products to the Patients.
MSRP	means a manufacturer suggested retail price.
Minimum Quantity	shall have meaning set out in Schedule 1.
Order	shall mean order for Product(s) made hereunder.
Patient	means an individual receiving from Medical Center (or having received) preventive, diagnostic, therapeutic, rehabilitative, or maintenance health services.
Patient Materials	means collectively: (i) Terms and Conditions, (ii) User Manual, (iii) and any other documents, information, items and materials in any form, which are provided by Aether related to the use of the Product by Patients.
Price	means the price payable by the Distributor to Aether in consideration of the sale and supply of Products pursuant to the terms of this Agreement and each of the Orders.
Product List	means a list of Products and its pricing available for the Distributor, current copy of which is attached as Schedule 3. Aether may add to, delete from, or otherwise modify the Products on the " Product List " at any time.
Product(s)	means products of Aether, in particular "Zeus" system combined of: (i) a multi action bionic limb available in left hand (A-01-L; A-01-L-T) or right hand (A-01-R; A-01-R-T) configuration, (ii) instruction for use (0704_IFU; U01DC-0301), (iii) user guide (U01DC-0100; U01DC-0101), (iv) software instruction (U01SW-0100), (v) Quick start guide for clinicians (U01DC-0200), (vi) accessories kit (AC-01), (vii) Zeus configurator web application v 1.00 or higher; Aether battery System AET-BAT-BS1; Aether Digital Platform ADP.
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. " Qualified Personnel " may be Medical Center's employed physicians, physician employees of independent physician practices under contract with Medical Center and pursuant to contracts with independent physicians, as well as nurse practitioners and other physician extenders.

Qualified Personnel Materials	means collectively: (i) Instruction for Use, (ii) and any other documents, information, items and materials in any form, which are provided by Aether related to sale of the Product and providing training to the Patients.
Representative(s)	means each Party's affiliates, and it's or their respective, distributors, shareholders, directors, officers, employees and agents.
Binding Forecast	shall have meaning set out in Schedule 1.
Term	means the term of this Agreement, which shall commence on the Effective Date and shall remain in effect until the termination or expiration hereof in accordance with the provisions of this Agreement.
Terms and Conditions	means the insert to be included in Medical Center'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-14%20Zeus_The%20bionic%20Limb%20Terms_and_Conditions.pdf . Aether may update or modify the Terms and Conditions from time to time.
Territory	means geographic territory of [●].
Trademark	means any trademark, trade name, service name, Aether's name and other designation of Aether or the Product(s), either registered or not.
User Manual	means the insert to be included in Medical Center's documentation intended for Patients setting forth the manual for use of the Product available at Aether's website: https://www.aetherbiomedical.com/download . Aether may update or modify the User Manual from time to time.
VAT	shall have meaning set out in Clause 4.4.

1.2 Unless the context otherwise requires:

- (a) all references to time, will be the time in Warsaw, Poland;
- (b) any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether before or after the date of this Agreement.

1.3 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.

1.4 The Parties hereto jointly participated in the negotiation and drafting of this Agreement. Each Party acknowledges that (i) has been advised to and has been given the opportunity to consult with legal counsel for the purposes of reviewing this Agreement; (ii) has read and understands this Agreement, (iii) is fully aware of its legal effect, and (iv) has entered into this Agreement freely and voluntarily and based on each Party's own judgment and not on any representations or promises other than those contained in this Agreement.

2. APPOINTMENT AS DISTRIBUTOR

- 2.1 Aether hereby appoints Distributor as the **non-exclusive**, authorized distributor of the Products to the Medical Centers located in the Territory and Distributor accepts such appointment.
- 2.2 Distributor shall be entitled to sell Products to the Medical Center only after such Medical Center becomes a party of Certified Partnership Program. Prior sale of Products, Distributor shall verify whether such Medical Center holds a Certificate.
- 2.3 Distributor shall not be entitled to sell Products directly to the Patients.
- 2.4 Distributor shall not obtain the Products for resale from any person or entity other than Aether.
- 2.5 Distributor 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 pursuant to the General Terms.
- 2.7 Aether may prohibit Distributor from providing Products to any person that it reasonably believes is using the Products in violation of: (i) the terms of this Agreement, or (ii) any law, regulation, policy, guideline, order, or similar authority issued by a federal, state or local government or any agency, board or commission thereof.
- 2.8 The relationship of Aether and Distributor established by this Agreement is that of independent contractors and nothing contained herein shall be construed to: (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as Distributors, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow Distributor to create or assume any obligation on behalf of Aether.
- 2.9 Subject to the terms and conditions of this Agreement, Distributor may appoint Authorized Resellers to market and sell the Products to the Medical Centers located on Territory under this Agreement, provided that (i) Distributor has entered into a written agreement with each such third party that at least provide same level of protection for Aether and Products as the terms of this Agreement, including any disclaimers and limitations of warranties and liability, rights of and limitations on scope of marketing and sales activities with respect to the Products; (ii) Aether grants its prior express consent to appointment of such Authorized Reseller. At any time, if requested by Aether, Distributor shall terminate the Authorized Reseller.
- 2.10 Distributor shall be responsible for the actions and omissions of all Authorized Resellers, and such conduct shall be governed by the terms of this Agreement, as if performed by Distributor. For clarity, in any circumstance where Distributor sells Product through an Authorized Reseller, both Distributor and the Authorized Reseller shall be responsible for performing the obligations of Distributor under this Agreement related to such sales (including support obligations), and Distributor shall be responsible under this Agreement for any failure of the Authorized Reseller to do so. The circumstance that Aether granted its consent to appoint the Authorized Reseller does not affect the responsibility of the Distributor and the Authorized Reseller as set out herein.

- 2.11 Nothing in this Agreement shall be construed as limiting in any manner Aether's marketing or distribution activities, directly or indirectly, with respect to the Products, similar products, or appointment of other dealers, distributors, resellers or agents.

3. GENERAL TERMS OF COLLABORATION

- 3.1 General terms of collaboration between the Parties under this Agreement and general responsibilities of the Parties are available at Aether's website: <https://7842652.fs1.hubspotusercontent-na1.net/hubfs/7842652/PDF%20Resources/MSD-13%20General%20terms%20of%20collaboration%20with%20distributors.pdf> (the "**General Terms**"). The General Terms shall for all purposes form part of this Agreement.

- 3.2 The General Terms regulate in particular:

- (a) Parties' general obligations and responsibilities including:
 - (i) Distributor's general responsibilities;
 - (ii) Distributor's legal compliance;
 - (iii) Distributor's obligations with respect to resale of Product to Medical Centers;
- (b) procedure of placing Orders;
- (c) general terms and conditions of Delivery;
- (d) general marketing development;
- (e) Aether's support responsibilities;
- (f) Product's integrity regulations;
- (g) Trademark use;
- (h) Aether's software license terms and conditions;
- (i) Aether's warranty protection terms provided to end-users (Patients).

4. PRICES

- 4.1 Prices paid by Distributor to Aether for Products shall be **DAP/DDP** (Delivered At Place/Delivery Duty Paid – Incoterms 2020) to Delivery Point and shall be net prices and initially be as set forth in the Product List constituting Schedule 3 hereto.
- 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 Distributor. Distributor is responsible for distribution of new Product List to Authorized Resellers.
- 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 Distributor to Medical Centers or Distributor'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 ("**VAT**") 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 Distributor invoice and paid by Distributor such that the net amount of cash received by Manufacturer equals the pricing per this Agreement.

- 4.5 Distributor's sole remuneration for performing its responsibilities under this Agreement shall be the payments it receives from its Medical Centers. Aether shall not reimburse the Distributor for any costs incurred by the Distributor in connection to this Agreement
- 4.6 Distributor shall establish the prices charged to Medical Centers at Distributor'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 Distributor to Aether.
- 4.7 No failure to collect payment from any Medical Center shall relieve Distributor of its obligation to pay Aether under this Agreement.

5. PAYMENT

- 5.1 Payment terms are []
- 5.2 If any sum payable under the Agreement is not paid when due then, without prejudice to the Aether's other rights in the Agreement or otherwise:
- (a) such sum will bear statutory interest from the due date until the date that actual payment is made in full, both before and after any judgement;
 - (b) Aether will be entitled to suspend all future Deliveries of Ordered Products and/or performance of the services pursuant to the terms of the Agreement until the outstanding amount has been received.

6. DELIVERY

- 6.1 Ordered Products will be supplied on a **DAP/DDP**(Delivered At Place/*Delivery Duty Paid – Incoterms 2020*) basis to the delivery point agreed between Parties ("**Delivery Point**") in standard package ("**Delivery**"). At the time of delivery of Ordered Products by Distributor to the Delivery Point, the title (excluding any software components of Products) and risk of loss will pass to Distributor. All freight, insurance and other shipping expenses to the Delivery Point, will be borne by Aether unless otherwise agreed by Parties. Any expenses related to Distributor's special packing requests shall be borne by Distributor.
- 6.2 Other terms and conditions of the Delivery are included in the General Terms.

7. 11.4 AETHER REPRESENTATIONS

Aether represents and warrants to Distributor as follows:

- (a) Aether is a limited liability company duly organized, validly existing and in good standing under the laws of Poland. Aether has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and conduct any obligations set forth herein;
- (b) each of the persons signing this Agreement and the other documents contemplated by this Agreement on behalf of Aether has the legal right, power and authority to bind Aether;
- (c) no petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under Polish bankruptcy law is pending against or contemplated (or, to Aether's knowledge, threatened) by or against Aether.

8. DISTRIBUTOR'S REPRESENTATIONS

Distributor represents and warrants to Distributor as follows:

- (a) Distributor is a company duly organized, validly existing and in good standing under the laws under which the Distributor is incorporated. Distributor has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and conduct any obligations set forth herein;
- (b) each of the persons signing this Agreement and the other documents contemplated by this Agreement on behalf of Distributor has the legal right, power and authority to bind Distributor;
- (c) no approval or consent is required from any person (including any Distributor, shareholder, member, creditor, investor or governmental body) for Distributor to execute, deliver or perform this Agreement. This Agreement and all documents required hereby to be executed by Distributor are and shall be valid, legally binding obligations of and enforceable against Distributor in accordance with their terms.
- (d) no petition in bankruptcy (voluntary or otherwise), attachment, execution proceeding, assignment for the benefit of creditors, or petition seeking reorganization or insolvency, arrangement or other action or proceeding under Polish bankruptcy law is pending against or contemplated (or, to Distributor's knowledge, threatened) by or against Distributor.

9. LIMITATIONS OF LIABILITY AND INDEMNITY

- 9.1 No interruption, disruption, or unavailability of the Products shall be considered to be a breach of this Agreement by Aether and Aether shall have no liability or responsibility arising out of or relating to any such event.
- 9.2 Notwithstanding any other provision of this Agreement, Aether shall not be liable to Distributor pursuant to this Agreement in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by Distributor of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business, goodwill production, opportunity, revenue or contracts or any other financial or economic loss provided that nothing in this Clause shall or be deemed to seek to limit any Party's liability for fraud. Total liability of Aether hereunder shall be limited to its remuneration actually received under the Order with respect to which any damage was caused.
- 9.3 Distributor 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 Distributor. The Distributor shall reimburse Aether for any costs related to such claims, proceedings or suits including paid damages, proceedings costs and legal fees.
- 9.4 If any Product is found defective or deficient as a result of acts or omissions of Distributor, Distributor shall upon notification by Medical Center 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, Distributor 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 9.3.
- 9.5 Notwithstanding other rights of Aether hereunder, Aether may suspend any sales to Distributor and suspend its appointment as Distributor in case the Distributor causes any damage to Aether or its goodwill.

10. CONFIDENTIALITY

- 10.1 Each Party shall, and shall cause each of its Representatives to keep secret and retain in strictest confidence any and all confidential matters relating to this Agreement and/or relating to the other Party, including but not limited to other Party's trade secrets and all other information of a business, financial, marketing, technical, personnel or other nature relating to the business of the such Party including, without limitation, any Distributor or vendor lists developed by the such Party, know-how, specifications, inventions, computer hardware, software programs and source code, data relating to the development, research (collectively, "**Confidential Information**"); and shall not disclose Confidential Information, and shall cause its affiliates and Representatives not to disclose them, to any person except such Representatives.

11. TERM AND TERMINATION

- 11.1 This Agreement shall commence on the Effective Date and continue for 12 (twelve) months from the Effective Date.
- 11.2 This Agreement shall be automatically renewed for the period of 12 (twelve) months following its initial term set out in Clause 11.1 and renewed term under this Clause 11.1 and remain in full force on conditions set forth herein unless either Party notifies the other Party on its will to terminate this Agreement not later than one month prior to the date set out in Clause 11.1 or a date being the last day of a renewed period as specified herein.
- 11.3 Notwithstanding to the foregoing, either Party may terminate this Agreement at any time by giving 3 (three) months' notice to the other Party.
- 11.4 Aether may terminate this Agreement immediately by giving notice to the Distributor if:
- (a) Distributor is in material breach of any of the terms of this Agreement;
 - (b) any payment due from Distributor is 20 (twenty) Business Days or more past due;
 - (c) any step is taken (in each case including, without limitation, the making of an application or the giving of any notice) towards the insolvency of Distributor, including without limitation, any of the following:
 - (i) any steps being taken to liquidate, wind up, place into bankruptcy or dissolve Distributor;
 - (ii) to appoint a liquidator, trustee, receiver, administrative receiver, administrator or similar officer to Distributor or any part of their respective undertaking or assets;
 - (iii) an encumbrancer takes possession of or any distress, execution, sequestration or process is levied or enforced upon the whole or any part of the undertaking, assets, rights or revenues of Distributor;
 - (iv) Distributor cease to carry on the whole or a substantial part of its business or stops or suspends payment of its debts or proposes or enters into any composition, scheme, compromise or arrangement with or for the benefit of its creditors generally or any class of them; or
 - (v) Distributor is unable to pay its debts as they fall due or is deemed unable to pay its debts.
- 11.5 Notice on termination of the Agreement shall be made in writing or via e-mail.
- 11.6 The rights to terminate this Agreement given by the foregoing provisions of this Clause 11 shall not prejudice any other right or remedy of any of the other Parties in respect of the breach concerned (if any) or any other breach.

11.7 Following termination of this Agreement:

- (a) Clauses 9, 10 and this Clause continue in force; and
- (b) Distributor shall not be entitled to any compensation whatsoever on termination or expiry of this Agreement; and
- (c) Aether shall also have the right, but not the obligation, to (a) purchase or (b) broker the transfer to a distributor of Aether's choosing any inventory of Products in Distributor's possession on the date of termination (including demo versions of Products) at the Prices paid by Distributor for such Products ("**Remaining Inventory**"). Distributor shall have the right for 90 (ninety) days after the date of termination hereof to sell all or a portion of the Remaining Inventory Aether chooses not to so purchase or broker. Any Remaining Inventory that (a) Aether chooses to purchase or to broker or (b) Distributor has not sold within such 90 (ninety)-day period shall be shipped by Distributor at Aether's direction and reasonable expense to a location designated by Aether; and
- (d) Distributor 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.

12. GENERAL

12.1 **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.

12.2 **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.

12.3 **Severance.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

If any provision of this Agreement is found to be illegal, invalid or unenforceable as described in this Clause 12.3, 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.

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

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

13. NOTICES

13.1 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 13.2 (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.

Provided that if deemed receipt occurs before 8 a.m. on a Business Day, the notice shall be deemed to have been received at 8 a.m. on that day, and if deemed receipt occurs after 4 p.m. on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 8 a.m. on the next Business Day.

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

(a) Distributor:

[•]

Address: [•]

for the attention of: [•]

e-mail: [•]

(b) Aether:

Aether Biomedical sp. z o.o.

Address: ul. Mostowa 11, 61-854 Poznań,

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

e-mail: dhruv@aetherbiomedical.com

13.3 Either Party may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other Party, which notice of change of address shall not become effective until the actual receipt thereof by the other Party.

13.4 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 13.2.

13.5 Notices (including accompanying papers) given under or in connection with the Agreement shall be given in English.

14. GOVERNING LAW AND JURISDICTION

14.1 **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.

14.2 **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.

14.3 **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.

PERSONAL DATA PROCESSING AGREEMENT

WHEREAS:

- A. the Partner acts as a Data Controller;
- B. the Parties concluded a [non-exclusive distribution agreement] dated on [●] ("Principal Agreement"), the performance of which implies the processing of personal data within the scope of this Agreement ("Agreement");
- C. the purpose of this Agreement is to define terms and conditions under which Aether Biomedical shall perform the personal data processing operations on behalf of the Partner;
- D. by concluding this Agreement the Parties intend to regulate the processing of personal data in compliance with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("GDPR");

THE PARTIES AGREE AS FOLLOWS:

1. ENTRUSTING THE PROCESSING OF PERSONAL DATA. THE SCOPE AND PURPOSE OF DATA PROCESSING.

1. **Subject of the Agreement. [GDPR 28.3]** Pursuant to the provisions of the GDPR, the Partner entrusts Aether Biomedical with the processing of personal data as referred to in Article 4 of the GDPR, on terms and in accordance with the purpose set out in this Agreement and in the Principal Agreement.

2. **Duration of processing. [GDPR 28.3]** Aether Biomedical shall process personal data for the duration of the Principal Agreement, subject to the provisions of this Agreement.

3. **Nature and purpose of processing. [GDPR 28.3]** The nature and purpose of data processing result from the Principal Agreement, i.e.:

- a. the nature of personal data processing is determined by the role of Aether Biomedical under the Principal Agreement;
- b. the purpose of personal data processing is to perform the Principal Agreement properly, inter alia to supply the Partner with Aether Biomedical's products for its further distribution, and to provide the Partner with access to with Aether Biomedical's CRM system.

4. **Type of personal data. [GDPR 28.3]** Data processing will include the types of personal data indicated below:

- a. name(s) and surname(s);
- b. functions and positions held;
- c. PESEL numbers or other identification numbers;
- d. details of an identity document;
- e. e-mail address;
- f. telephone numbers;
- g. mailing address.

5. **Categories of data subjects. [GDPR 28.3]** The personal data processed by Aether Biomedical hereunder shall refer to the following groups of people:

- a. Partner's personnel, contractors and employees;
- b. Partner's clients and contractors; (inter alia resellers of Aether Biomedical's products);
- c. contact persons of the Partner.

2. SUB-PROCESSING

1. **DATA SUB-PROCESSING. [GDPR 28.2]** PARTNER HEREBY AUTHORIZES AETHER BIOMEDICAL TO ENGAGE ANOTHER DATA PROCESSOR ("SUB-PROCESSOR") OF AETHER BIOMEDICAL'S CHOICE FOR PROCESSING OF PERSONAL DATA ON BEHALF OF PARTNER UNDER WRITTEN AGREEMENT CONCLUDED WITH SUCH SUB-PROCESSOR. THE SCOPE AND PURPOSE OF PROCESSING THE PERSONAL DATA BY THE SUB-PROCESSOR SHALL NOT EXCEED THE SCOPE AND PURPOSE OF PERMITTED PROCESSING THEREOF BY AETHER BIOMEDICAL UNDER THIS AGREEMENT.

2. **SUB-PROCESSORS.** SUCH SUB-PROCESSORS SHALL INCLUDE: (I) AETHER BIOMEDICAL'S SUBCONTRACTORS ENGAGED IN THE PERFORMANCE OF THE PRINCIPAL AGREEMENT, AND (II) PROVIDER OF INFRASTRUCTURE. THE LIST OF SUB-PROCESSORS SUBCONTRACTED FOR DATA PROCESSING IS AVAILABLE AT THE REQUEST OF THE PARTNER.

3. **OBJECTION RIGHT. [GDPR 28.2 SENTENCE 2]** PARTNER MAY OBJECT TO AETHER BIOMEDICAL'S USE OF A SUB-PROCESSOR BY NOTIFYING AETHER BIOMEDICAL PROMPTLY IN WRITING OR VIA E-MAIL WITHIN 7 DAYS AFTER RECEIPT OF THE NOTICE.

4. **DATA PROTECTION OBLIGATIONS OF SUB-PROCESSORS. [GDPR 28.4]** SUB-PROCESSORS SHALL APPLY THE SAME DATA PROTECTION OBLIGATIONS AS SET OUT HEREIN, IN PARTICULAR PROVIDE SUFFICIENT GUARANTEES OF APPROPRIATE TECHNICAL AND

ORGANIZATIONAL MEASURES TO ENSURE THAT THE DATA PROCESSING MEET THE REQUIREMENTS OF THE GDPR.

3. OBLIGATIONS OF AETHER BIOMEDICAL (DATA PROCESSOR)

1. **DOCUMENTED INSTRUCTIONS. [GDPR.28.3.A]** AETHER BIOMEDICAL PROCESSES THE PERSONAL DATA ONLY IN ACCORDANCE WITH THE DOCUMENTED (E.G. IN WRITING OR E-MAIL) INSTRUCTIONS OF THE PARTNER. THE PARTIES SHALL DETERMINE IN THE AGREEMENT THE METHOD OF COMMUNICATION FOR THE PURPOSES OF PERFORMING THIS AGREEMENT.

2. **TRANSFER OF PERSONAL DATA OUTSIDE THE EEA. [GDPR.28.3.A]** AETHER BIOMEDICAL MAY NOT TRANSFER OR AUTHORIZE THE TRANSFER OF PERSONAL DATA TO A THIRD COUNTRY OR AN INTERNATIONAL ORGANIZATION OUTSIDE THE EUROPEAN ECONOMIC AREA ("EEA") WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARTNER. IF PERSONAL DATA PROCESSED UNDER THIS AGREEMENT IS TRANSFERRED FROM A COUNTRY WITHIN THE EEA TO A COUNTRY OUTSIDE THE EEA, THE PARTIES SHALL ENSURE THAT THE PERSONAL DATA ARE ADEQUATELY PROTECTED. TO ACHIEVE THIS, THE PARTIES SHALL, UNLESS AGREED OTHERWISE, RELY ON THE STANDARD CONTRACTUAL CLAUSES FOR THE TRANSFER OF PERSONAL DATA, APPROVED BY THE EUROPEAN COMMISSION.

3. **NOTIFICATION OF PERSONAL DATA TRANSFER OUTSIDE THE EEA. [GDPR.28.3.A]** IF AETHER BIOMEDICAL IS REQUIRED BY LAW TO TRANSFER PERSONAL DATA OUTSIDE THE EEA, AETHER BIOMEDICAL SHALL INFORM THE PARTNER ABOUT THAT LEGAL REQUIREMENT BEFORE PROCESSING DATA, UNLESS THE LAW PROHIBITS SUCH INFORMATION ON IMPORTANT GROUNDS OF PUBLIC INTEREST.

4. **CONFIDENTIALITY. [GDPR.28.3.B]** AETHER BIOMEDICAL ENSURES THAT THE PERSONS AUTHORIZED BY AETHER BIOMEDICAL TO PROCESS PERSONAL DATA HAVE COMMITTED THEMSELVES TO CONFIDENTIALITY OR ARE SUBJECT TO AN APPROPRIATE STATUTORY OBLIGATION OF CONFIDENTIALITY.

5. **PROOF OF COMPETENCY.** AETHER BIOMEDICAL ENSURES THAT PERSONS AUTHORIZED BY AETHER BIOMEDICAL TO PROCESS PERSONAL DATA HAVE RECEIVED APPROPRIATE TRAINING ON THEIR RESPONSIBILITIES REGARDING THE PROTECTION OF PERSONAL DATA.

6. **SECURITY. [GDPR.28.3.C]** AETHER BIOMEDICAL ENSURES THE PROTECTION OF PERSONAL DATA AND TAKES ALL MEASURES REQUIRED PURSUANT TO ARTICLE 32 OF THE GDPR, IN ACCORDANCE WITH THE FOLLOWING PROVISIONS OF THIS AGREEMENT.

7. **DATA SUBJECT REQUEST. [GDPR.28.3.E]** TAKING INTO ACCOUNT THE NATURE OF THE PERSONAL DATA PROCESSING, AETHER BIOMEDICAL SHALL ASSIST PARTNER THROUGH IMPLEMENTING APPROPRIATE TECHNICAL AND ORGANIZATIONAL MEASURES, INsofar AS THIS IS POSSIBLE, IN FULFILLING PARTNER'S OBLIGATION TO RESPOND TO THE REQUESTS OF THE DATA SUBJECTS WITH RESPECT TO THE EXERCISE OF THEIR RIGHTS AS REFERRED TO IN CHAPTER III OF THE GDPR. IF THE DATA SUBJECT TRANSFERS THE REQUEST DIRECTLY TO AETHER BIOMEDICAL, AETHER BIOMEDICAL SHALL IMMEDIATELY INFORM PARTNER ABOUT THE SUBMITTED REQUEST. PARTNER IS SOLELY RESPONSIBLE FOR PREPARING A RESPONSE TO THE REQUEST OF THE DATA SUBJECT.

8. **SECURITY OF PERSONAL DATA. [GDPR.28.3.F]** AETHER BIOMEDICAL SHALL ASSIST THE PARTNER, INsofar AS THIS IS POSSIBLE, IN FULFILLING THE OBLIGATIONS RELATED TO ENSURING ADEQUATE DATA SECURITY OF PERSONAL DATA, OBLIGATION TO REPORT VIOLATIONS OF PERSONAL DATA PROTECTION OR OBLIGATION TO ASSESS THE IMPACT FOR DATA PROTECTION (RESULTING FROM ARTICLES 32-36 OF THE GDPR).

9. **LAWFULNESS OF INSTRUCTIONS. [GDPR 28.3 SEC 2]** IN THE EVENT OF AETHER BIOMEDICAL'S DOUBTS AS TO CONFORMITY OF THE PARTNER'S INSTRUCTION WITH THE PROVISIONS OF LAW, AETHER BIOMEDICAL SHALL IMMEDIATELY INFORM THE PARTNER IN WRITING OR VIA E-MAIL OF THE IDENTIFIED DOUBT.

10. **DATA PROTECTION BY DESIGN. [GDPR 25.1]** WHENEVER AETHER BIOMEDICAL PLANS TO MAKE CHANGES WITH REGARD TO THE PROCESSING OF PERSONAL DATA, IT SHALL COMPLY WITH THE REQUIREMENTS SET OUT IN ARTICLE 25(1) OF THE GDPR (DATA PROTECTION BY DESIGN).

11. **LIMITATION OF ACCESS. [GDPR 25.2]** AETHER BIOMEDICAL SHALL ENSURE THAT AETHER BIOMEDICAL'S ACCESS TO PERSONAL DATA IS LIMITED TO THOSE OF PERSONNEL ENGAGED IN THE PERFORMANCE OF THE PRINCIPAL AGREEMENT.

12. **RECORDS OF PROCESSING ACTIVITIES. [GDPR 30.2]** IF APPLICABLE, AETHER BIOMEDICAL SHALL MAINTAIN A RECORD OF PROCESSING ACTIVITIES CARRIED OUT ON BEHALF OF PARTNER AS REFERRED TO IN ARTICLE 30(2) OF THE GDPR AND MAKE IT AVAILABLE TO THE PARTNER UPON ITS REQUEST, EXCEPT FOR INFORMATION CONSTITUTING A TRADE SECRET OF OTHER CUSTOMERS OF AETHER BIOMEDICAL.

13. **CONFIDENTIALITY OBLIGATIONS OF PERSONS AUTHORIZED TO PROCESS DATA.** AETHER BIOMEDICAL SHALL ENSURE THAT PERSONS AUTHORIZED TO PROCESS PARTNER'S PERSONAL DATA WILL (I) PROCESS SUCH DATA ONLY IF INSTRUCTED BY THE PARTNER, AND (II) KEEP SUCH DATA AND THE SECURITY MEASURES SECRET, AND THE OBLIGATION OF

CONFIDENTIALITY SHALL SURVIVE THE TERMINATION OF PERSONNEL ENGAGEMENT IN SUCH PERSONAL DATA PROCESSING.

4. OBLIGATIONS OF PARTNER (DATA CONTROLLER)

1. **PARTNER'S DUTIES.** PARTNER SHALL COOPERATE WITH AETHER BIOMEDICAL WITH RESPECT TO DATA PROCESSING, INCLUDING PROVIDING AETHER BIOMEDICAL WITH EXPLANATIONS IN THE EVENT OF DOUBT AS TO THE CONFORMITY OF THE PARTNER'S INSTRUCTIONS WITH THE PROVISIONS OF LAW, AS WELL AS FULFILL PARTNER'S OBLIGATIONS IN A TIMELY MANNER.

2. **COMPLIANCE WITH PRINCIPLES RELATING TO PROCESSING OF PERSONAL DATA. [GDPR 5]** PARTNER REPRESENTS THAT IT IS PROCESSING PERSONAL DATA IN ACCORDANCE WITH THE PRINCIPLES SET OUT IN ARTICLE 5 OF THE GDPR.

3. **THE PARTNER'S STATEMENT.** PARTNER REPRESENTS THAT IT IS THE CONTROLLER OF THE PERSONAL DATA AND THAT IT IS ENTITLED TO PROCESS THE PERSONAL DATA TO THE EXTENT THAT PARTNER ENTRUSTED THESE DATA FOR PROCESSING TO AETHER BIOMEDICAL.

5. SECURITY OF PERSONAL DATA

SAFETY MEASURES. [GDPR 32] PRIOR TO THE COMMENCEMENT OF THE PROCESSING OF PERSONAL DATA, AETHER BIOMEDICAL SHALL IMPLEMENT APPROPRIATE TECHNICAL AND ORGANIZATIONAL MEASURES ENSURING AN ADEQUATE LEVEL OF SECURITY CORRESPONDING TO THE RISK RELATED WITH THE PROCESSING OF PERSONAL DATA, REFERRED TO IN ARTICLE 32 OF THE GDPR, IN ORDER TO PROTECT THE PERSONAL DATA AGAINST ACCIDENTAL OR UNLAWFUL DESTRUCTION OR ACCIDENTAL LOSS, ALTERATION, UNAUTHORIZED DISCLOSURE OR ACCESS, IN PARTICULAR WHERE THE PROCESSING INVOLVES THE TRANSMISSION OF DATA OVER A NETWORK, AND AGAINST ALL OTHER UNLAWFUL FORMS OF PROCESSING. IN PARTICULAR AETHER BIOMEDICAL, IF APPLICABLE, SHALL PROVIDE:

- a. the pseudonymization and encryption of personal data,
- b. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services,
- c. the ability to promptly restore the availability and access to personal data in the event of a physical or technical incident,
- d. a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of processing.

6. NOTIFICATION OF A PERSONAL DATA BREACH

1. **NOTIFICATION OF SUSPECTED PERSONAL DATA BREACH.** IN THE EVENT OF SUSPECTED PERSONAL DATA BREACH, AETHER BIOMEDICAL SHALL NOTIFY PARTNER OF THE PERSONAL DATA BREACH WITHIN 24 HOURS AFTER BECOMING AWARE OF IT.

2. **NOTIFICATION OF PERSONAL DATA BREACH.** THE NOTIFICATION OF THE PERSONAL DATA BREACH SHALL BE SENT TO THE PARTNER ALONG WITH THE INFORMATION AS REFERRED TO IN ARTICLE 33(3) OF THE GDPR, IN ORDER TO ENABLE PARTNER TO FULFILL ITS OBLIGATION TO NOTIFY THE PERSONAL DATA BREACH TO THE COMPETENT SUPERVISORY AUTHORITY.

3. **COMMUNICATION.** THE PARTIES SHALL DETERMINE THE METHODS OF COMMUNICATION AND DESIGNATE PERSONS RESPONSIBLE FOR INCIDENT MANAGEMENT AND NOTIFICATIONS IN ORDER TO REPORT PERSONAL DATA BREACHES AND OTHER INCIDENTS IN A TIMELY MANNER PURSUANT TO THE GDPR. FOR THIS PURPOSE, THE PARTIES DESIGNATE CONTACT PERSONS INDICATED IN CLAUSE 7 BELOW.

7. CONTACT PERSONS

CONTACT DETAILS. THE CONTACT PERSONS IN ALL MATTERS RELATED TO THE PERSONAL DATA PROTECTION, INCLUDING THE NOTIFICATIONS REFERRED TO IN CLAUSE 6.3, SHALL BE SAME AS IN THE PRINCIPAL AGREEMENT. THE ADDRESSES FOR NOTICES (INCLUDING E-MAIL ADDRESSES) PROVIDED IN THE PRINCIPAL AGREEMENT SHALL APPLY ALSO FOR NOTICES UNDER THIS AGREEMENT.

8. CONTROL RIGHTS. AUDITS.

1. **AUDIT RIGHTS. [GDPR.28.3.H]** AETHER BIOMEDICAL SHALL MAKE AVAILABLE TO PARTNER, ON ITS REQUEST, ALL INFORMATION NECESSARY TO DEMONSTRATE COMPLIANCE WITH THIS AGREEMENT AND ALLOW FOR AND CONTRIBUTE TO AUDITS, INCLUDING INSPECTIONS, CONDUCTED BY PARTNER OR ANOTHER AUDITOR MANDATED BY PARTNER IN RELATION TO THE PROCESSING OF THE PARTNER'S PERSONAL DATA BY AETHER BIOMEDICAL.

2. **COOPERATION WITH THE SUPERVISORY AUTHORITY. [GDPR 31]** AETHER BIOMEDICAL SHALL COOPERATE, ON REQUEST, WITH THE SUPERVISORY AUTHORITY IN THE PERFORMANCE OF ITS TASKS.

3. **NOTIFICATION OBLIGATIONS.** AETHER BIOMEDICAL SHALL NOTIFY THE PARTNER IMMEDIATELY OF:

- a. initiation of any control, audit or inspection concerning the processing of personal data by Aether Biomedical, in particular conducted by the supervisory authority, as well as of any decisions issued in relation thereto,

- b. administrative, judicial or any other proceedings, actual or pending, concerning the processing of the personal data by Aether Biomedical, as well as of any decisions, orders or rulings issued in relation thereto,
- c. any requirement to make personal data available to the competent authority, unless provisions of law do not allow for such notification.

9. LIABILITY

1. **LIABILITY OF AETHER BIOMEDICAL. [GDPR 82.2]** AETHER BIOMEDICAL SHALL BE LIABLE FOR THE DAMAGE CAUSED BY PROCESSING ONLY IF (I) IT HAS FAILED TO COMPLY WITH THE GDPR PROVISIONS SPECIFICALLY DIRECTED TO DATA PROCESSORS, OR (II) IT HAS ACTED WITHOUT THE PARTNER'S LAWFUL INSTRUCTIONS, OR AGAINST THOSE INSTRUCTIONS.

2. **LIABILITY OF SUB-PROCESSORS. [GDPR 28.4]** WHERE THE SUB-PROCESSOR FAILS TO FULFIL ITS DATA PROTECTION OBLIGATIONS, AETHER BIOMEDICAL SHALL REMAIN FULLY LIABLE TO PARTNER FOR THE PERFORMANCE OF THAT SUB-PROCESSOR'S OBLIGATIONS.

10. RETURN AND DELETION OF PERSONAL DATA

1. **END OF DATA PROCESSING. [GDPR 28.3.G]** UPON TERMINATION OF THIS AGREEMENT, AETHER BIOMEDICAL SHALL NOT HAVE THE RIGHT TO FURTHER PROCESS PERSONAL DATA AND SHALL BE OBLIGED TO DELETE OR RETURN PERSONAL DATA TO PARTNER (INCLUDING ALL THEIR BACKUPS), UNLESS THE APPLICABLE LAW REQUIRES STORAGE OF THE PERSONAL DATA.

2. **OBLIGATION TO STORE THE PERSONAL DATA. [GDPR 28.3.G]** IF AETHER BIOMEDICAL CANNOT DELETE PERSONAL DATA WITHIN THE TIME LIMIT SET BY THE PARTNER DUE TO LAWS REQUIRING THE STORAGE OF PERSONAL DATA, AETHER BIOMEDICAL SHALL NOTIFY IT TO PARTNER.

11. FINAL PROVISIONS

1. **ENTRY INTO FORCE.** THIS AGREEMENT SHALL ENTER INTO FORCE UPON EXECUTION BY BOTH PARTIES.

2. **TERM. [GDPR 28.3]** THE AGREEMENT IS CONCLUDED FOR THE DURATION OF THE PRINCIPAL AGREEMENT. FOR THE AVOIDANCE OF ANY DOUBT, THE EXPIRATION OR TERMINATION OF THE PRINCIPAL AGREEMENT SHALL RESULT IN THE TERMINATION OF THIS AGREEMENT.

3. **PRIORITY.** IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THIS AGREEMENT AND THE PRINCIPAL AGREEMENT, THE PROVISIONS OF THIS AGREEMENT SHALL PREVAIL.

4. **CONFIDENTIALITY.** THE CONTENT OF THIS AGREEMENT, AS WELL AS ANY PERSONAL DATA OR INFORMATION DISCLOSED IN CONNECTION WITH THIS AGREEMENT SHALL BE TREATED BY THE PARTIES AS STRICTLY CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO THIRD PARTIES.

5. **JURISDICTION.** EACH PARTY IRREVOCABLY AGREES TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF POLAND HAVING JURISDICTION OVER AETHER BIOMEDICAL'S REGISTERED OFFICE IN RELATION TO ANY CLAIM OR MATTER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

6. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF POLAND.

7. **COUNTERPARTS.** THIS AGREEMENT MAY BE EXECUTED IN TWO OR MORE IDENTICAL COUNTERPARTS, ALL OF WHICH SHALL BE CONSIDERED ONE AND THE SAME AGREEMENT.

Partner/Distributor

Aether Biomedical

Schedules:

Schedule 1 – Order for inventory

Schedule 2 – Product List

Schedule 3 – List of Authorized Persons

Schedule 4 – Order form FRM-30 Demo Unit ordering Form; FRM-31 Purchase Order Form EU/Non-EU; FRM-15 Purchase Order Form US

DISTRIBUTOR – [●]

SIGNATURE: _____

NAME: _____

TITLE: _____

AETHER – AETHER BIOMEDICAL SP. Z O.O.

SIGNATURE: _____

NAME: _____

TITLE: _____

SCHEDULE 1
INITIAL ORDER (order for inventory)

No.	Product	Net price per item	Amount	Total net price
1.				
2.				
3.	[•] - demo			
Total net				
VAT				
Total gross				
Expected Delivery date:				
Delivery Point:				
Individual authorized for pick up:				

**SCHEDULE 2
PRODUCT LIST**

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

SCHEDULE 3
LIST OF INDIVIDUALS AUTHORIZED TO PLACE ORDERS

No.	Name	e-mail	phone
1.			
2.			
3.			

SCHEDULE 4
ORDER FORM