

DATED APRIL 3, 2012

DISTRIBUTION AGREEMENT

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DISTRIBUTION AGREEMENT

THIS AGREEMENT is made on the 4th day of April, 2012 (the "Effective Date")

BETWEEN

(1) ***, whose registered office is at _____, U.S.A. ("****")

AND

(2) *****, whose registered office is at _____ ("Distributor").

WHEREAS

- A. *** is the exclusive distributor in the United States for the lightweight compactble electric wheelchair produced by *** Ltd. (the "Products").
- B. *** is the exclusive distribuotr of the Products or has the rights to license or sell the Products.
- C. *** wishes to appoint a distributor or re-seller for the Products within the Territory (as hereinafter defined).
- D. Distributor has marketing and sales experience in the Territory and agrees to act as a distributor for *** subject to the terms and conditions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS

1.1 In these terms and conditions the following words and expressions bear the following meanings:

"Business Day" means any day other than Saturday or Sunday or a bank or public holiday in the United States of America unless otherwise agreed in writing between the Parties.

"Change of Control" means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the management or policies, whether through ownership of shares, by contract or by any other means, and **"Control"** shall be interpreted accordingly.

"Charges" has the meaning specified in Clause 7.1.

"Confidential Information" has the meaning specified in the Mutual Non-Disclosure Agreement set out in Exhibit B.

"End Users" means the customers to whom Distributor markets, sells and distributes the Products.

"FCA" has the meaning prescribed in the Incoterms 2000.

"Force Majeure" means in relation to either Party, any cause beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies

and raw materials, requirements or regulations of any civil or military authority and compliance with any law or governmental order, rule, regulation or direction.

“Hardware” means the hardware components of the Products including all ancillary equipment, accessories, spares and supplies manufactured therefor by or for ***.

“Initial Term” means the period of six (6) months commencing on the Effective Date.

“Intellectual Property” means all patents, copyrights (including copyright in computer programs), Trade Marks, service marks, design rights, database rights, semi-conductor topography rights, mask rights and any other intellectual or industrial property rights of whatsoever nature and whether registered, unregistered or capable of registration, including all rights in the nature of intellectual property rights and whether some to those described above or otherwise, and whether existing or perspective throughout the world.

“Know How” means know-how, trade secrets, confidential technical and proprietary industrial commercial information and techniques in any form (including paper, electronically stored data, magnetic media, film and microfilm), including (without limiting the foregoing) drawings, reports, plans, specifications, notes of meetings, photographs, instruction and training manuals and any similar proprietary rights which subsist anywhere in the world.

“Month” means a calendar month.

“Mutual Non-Disclosure Agreement” means terms and conditions which govern the transmission or exchange of Confidential Information between the Parties as specified in Exhibit B hereto.

“Normal Business Hours” means the hours of 08:00 to 18:30 (inclusive) on any Business Day or such other times as may be agreed in writing between the Parties from time to time.

“Parties” means *** and Distributor and Party means either of them.

“Products” means the lightweight compactble electric wheelchair which includes a solar panel which are listed in Part A of Exhibit A as may be amended in writing by the Parties from time to time.

“Results” means any and all works of authorship and materials developed, written or prepared by ***, its employees, agents or sub-contractors in providing the Products (whether individually, collectively or jointly with Distributor) including, without limitation, any functional and performance specification and any and all reports, studies, data, diagrams, notes, development aids, drawings, charts, specifications, programs, program listings, programming tools, documentation, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto (and on whatever media, including without limitation, written or printed documents, computer disks, floppy disks, CDs diskettes or tapes), but excluding ordinary correspondence passing between *** and Distributor.

“Rolling Forecast” has the meaning specified in Clause 5.1.

“Sales Targets” means the quarterly sales targets to be achieved by Distributor as set out in Part A of Exhibit A.

“Software” means any operating system, utility or applications software and all technical documentation, program specifications, operations, manuals, training manuals and all other documentation therefore which is owned by *** and which forms part of the Products.

“Support Fees” has the meaning prescribed in Clause **Error! Reference source not found..**

“Second Line Support Services” means the second line maintenance and support services which shall be provided by *** to Distributor in respect of the Products on the terms and conditions of this Agreement.

“Territory” means United States.

“Trade Marks” means the trade marks listed in Exhibit D and such other trade marks or trade names as used by *** on or in relation to the Products at any time during this Agreement and which *** may permit Distributor by express notice in writing to use.

1.2 Interpretation Generally

In this Agreement and in the Schedules, unless the context otherwise requires or unless otherwise specified:-

- 1.2.1 any reference to any statute, statutory provision, or to any order or regulation shall be construed as a reference to that statute, provision, order or regulation as extended, modified, replaced or re-enacted from time to time (whether before or after the date of this Agreement) and all statutory instruments, regulations and orders from time to time made thereunder or deriving validity therefor (whether before or after the date of this Agreement);
- 1.2.2 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
- 1.2.3 all references to recitals, Clauses, schedules and annexures are to recitals in, Clauses of and schedules and annexures to this Agreement;
- 1.2.4 headings are for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.5 words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of this Agreement and not to any particular section, Clause or paragraph hereof;
- 1.2.6 in construing this Agreement general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and any reference to the word “include” or “including” is to be construed without limitation;
- 1.2.7 any reference to “Agreement” or any other document or to any specified provision of this Agreement or any other document is to this Agreement, that document or that provision as in force for the time being and as amended from time to time in accordance with the terms of this Agreement or that document;
- 1.2.8 any reference to a person shall be construed as a reference to any individual, firm, Company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- 1.2.9 any reference to a person includes his successors, personal representatives and permitted assigns;
- 1.2.10 “writing” or any similar expression includes transmission by facsimile and electronic correspondence (email);
- 1.2.11 if any action or duty to be taken or performed under any of the provisions of this Agreement would fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such day;

1.2.12 "holding Company" and "subsidiary" shall have the meaning attributed to them by Section 155 of the Companies Act, 1963;

2 APPOINTMENT OF DISTRIBUTOR

- 2.1 Subject to the conditions of this Agreement, *** hereby appoints Distributor as its distributor to promote, market, resell, distribute, and support the Products in the Territory.
- 2.2 The parties hereby agree that Distributor shall be appointed on a non-exclusive basis for a period of six (6) months commencing on the Effective Date. .
- 2.3 *** shall not compete directly with Distributor in the sale of the Products for accounts that are identified by the Distributor in the Territory.
- 2.4 Nothing in this Agreement shall entitle Distributor to any priority of supply in relation to the Products as against ***'s other distributors or customers.
- 2.5 Distributor shall not obtain the Products for resale from any person, firm or company other than ***.
- 2.6 Although *** may publish suggested wholesale or retail prices for the Products, these amounts are suggestions only and shall not be binding in whole or in part and Distributor shall be entirely free without any limitation whatsoever, to establish the actual prices and licence fees at which the Products shall be provided to End Users.

3 DISTRIBUTOR OBLIGATIONS

- 3.1 Distributor undertakes to:-
 - 3.1.1 use its best endeavours to initiate, promote, extend and develop sales of the Products and obtain orders therefor throughout the Territory and not to do anything which may hinder or interfere with such sales and to satisfy and generate market demand therefor;
 - 3.1.2 carry on its affairs in a businesslike manner which reflects favourably at all times on the Products and the good name, goodwill and reputation of *** and at all times in accordance with the provisions of this Agreement;
 - 3.1.3 ensure that at all times, at its own expense, it maintains a suitable place of business in the Territory and employs a sufficient number of qualified sales, technical and other personnel to satisfactorily perform its obligations under this Agreement;
 - 3.1.4 demonstrate the Product to End Users and prospective End Users;
 - 3.1.5 inform *** in writing as soon as practicable (and in any case no later than one (7) Business Days of it becoming aware) of any defects or faults in any of the Products or of any claim or proceeding involving the Products;
 - 3.1.6 forward details of all End User complaints and after-sales enquiries immediately to *** and not to settle any complaint or act in any way so as to accept liability for or prejudice the ability to defend such complaint and to act on such complaint only in accordance with the instructions of ***;
 - 3.1.7 not to sell, license or enter into any contracts of behalf of *** or to bind *** in any way or, without ***'s prior written consent to make any promises, representations, warranties or guarantees in relation to the Products on behalf of *** or otherwise incur any liability on behalf of *** or in any way pledge or purport to pledge ***'s credit. Distributor shall indemnify *** and keep *** fully and effectively indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature (including reasonable attorneys fees) arising out of or in connection with or

consequent upon any promise, representation, warranty or guarantee made in relation to the Products by Distributor without the prior written consent of ***;

- 3.1.8 keep appropriate insurance in respect of the Products and in respect of any claim for which Distributor is or may be liable in connection with the Products;
 - 3.1.9 comply with all applicable laws from time to time in force in performing its duties hereunder and in any dealings with the Products;
 - 3.1.10 keep *** duly and fully informed of market potential and trends in the Territory, competitive information and all changes in legal requirements and practices affecting the importation storage, distribution, resale and distribution of the Products in the Territory;
 - 3.1.11 inform *** immediately of any changes in Distributor's organisation (including a Change of Control of Distributor or a change in its business or senior management or method of doing business) which might affect the performance of Distributor's duties hereunder;
 - 3.1.12 from time to time consult with ***'s officers and agents or representatives for the purpose of assessing the state of the market in the Territory;
 - 3.1.13 obtain or seek to obtain any authorisations or approvals by the relevant authorities which may be required having regard to this Agreement and the resale, importation, advertising, resale and distribution of the Products in the Territory and shall ensure that the validity of same is maintained during the term hereof;
 - 3.1.14 not be involved during the term of the Agreement and for a period of eighteen (18) months thereafter in the creation, development, manufacture, sale or distribution in the Territory of any products which compete with the Products;
- 3.2 It is agreed by the Parties that all marketing, advertising and promotional costs incurred in the Territory in relation to the Products shall be for the account of Distributor unless otherwise agreed by ***.

4 *** OBLIGATIONS

- 4.1 *** shall from time to time provide Distributor with such samples, catalogues, brochures and up-to-date information and instruction books and technical pamphlets concerning the Products as *** may consider appropriate in connection with the resale of the Products in the Territory and *** shall endeavour to answer as soon as practicable any technical enquiries of Distributor concerning the Products.
- 4.2 Subject to Clause **Error! Reference source not found.**, *** shall provide the Second Line Support Services to Distributor.

5 SUPPLY OF THE PRODUCTS

- 5.1 Distributor shall provide *** with a rolling forecast (the "Rolling Forecast") that notifies *** all Products that Distributor requires and when these Products need be delivered subject to reasonable demand for delivery; Distributor shall promptly notify *** of any changes in circumstances which may affect its requirements.
- 5.2 The Rolling Forecast shall form the basis for market focus and Sales Targets and for quarterly discussions between *** and Distributor by telephone or in person.
- 5.3 To initiate an order, Distributor shall provide *** with a written purchase order (an "Order") delivered by facsimile, post or electronic mail to the attention of ***, **COO, Fax #: +***** at the address specified in Clause 22 or at such other address as may subsequently be notified by *** to Distributor. Orders shall be signed by an authorised representative of Distributor. Any

contingencies or terms and conditions contained in an Order shall not be binding on ***. Orders shall first be subject to the written approval and acceptance by ***.

- 5.4 Each Order shall specify, inter alia:-
- (a) Products and options description;
 - (b) quantity of the Products;
 - (c) the Charges
 - (d) requested delivery dates, including orders for customer trials;
 - (e) any special instructions.
- 5.5 Distributor shall, in respect of each Order for the Products to be supplied hereunder, be responsible for:-
- 5.5.1 ensuring the accuracy of the Order;
 - 5.5.2 providing *** with any information which is necessary in order to enable *** to fulfil the Order and to comply with all labelling, packaging, marketing and other applicable legal requirements in the Territory; and
- 5.6 Upon receipt and confirmation of each Order, *** shall as soon as is practicable inform Distributor of ***'s estimated delivery date for the consignment. *** shall use all reasonable endeavours to provide the Products to Distributor within (90) Days from receipt of an Order provided that volumes and configurations are approximately forecasted in accordance with Clause 5.1 above. *** shall use reasonable endeavours to attempt to satisfy short-term Orders requested by Distributor as soon as reasonably practicable. Time of delivery shall not be of the essence and accordingly *** shall have no liability whatsoever for any loss (including loss of trade or profit) or damage whether arising directly or indirectly to Distributor if, notwithstanding such endeavours, there is any delay in delivery.
- 5.7 *** shall be entitled to decline to accept any Order from Distributor if it shall be unable for causes beyond the reasonable control of *** to fulfil such Order or by reason of *** ceasing to manufacture the Products or being unable to obtain the Products or any ingredient or component part thereof in the required quantities. In so declining, *** shall not incur any liability or obligation to Distributor.
- 5.8 Each Order for the Products shall constitute a separate contract, and any default by *** in relation to any particular Order shall not entitle Distributor to treat this Agreement as terminated.
- 5.9 *** shall not be under any obligation to continue the supply of all or any of the Products, and shall be entitled to make such alterations to the specifications of the Products as it may in its absolute discretion think fit.
- 5.10 Unless the Parties otherwise agree in writing, delivery of the Products shall take place in accordance with FCA Incoterms 2000. The "named place" for the purposes of FCA and this Agreement shall mean the *** address specified in Clause 22 or at such other address as may be agreed to in writing by ***. FCA Incoterms 2000, Transport Handling Charges ("THC") for Distributor's account. Delivery of the Products to the named place shall constitute delivery to Distributor of the Products.
- 5.11 Distributor agrees not to hold *** liable or responsible for delays or inability to deliver under this Agreement due to foreign import control laws, regulations and processes. The Parties hereby agree that *** shall be afforded a reasonable extension of time for delivery of the Products or a right to terminate the Agreement in the event of any unforeseen restrictions or prohibitions relating to ***'s export duties hereunder. Distributor undertakes, at the risk and

expense of ***, to render all reasonable assistance and documentation to *** for the purposes of enabling *** to carry out its export obligations hereunder.

- 5.12 From time to time, Distributor may request that *** contract for carriage of the Products to anywhere other than the named place (the "Alternative Location"). In such circumstances, the Order must specify exact "ship to" place of business, shipping instructions (if any) and tax status for each "ship to" location including exemption certificates if tax exempt. *** shall be entitled, without any liability whatsoever, to decline to accept any Order from Distributor which contains a request for carriage of the Products to an Alternative Location. In the event that *** agrees to contract for carriage of the Products to the Alternative Location, any such agreement shall be subject to the contract for carriage being at Distributor's risk and expense and *** shall be entitled to select the common carrier and the method of transport. Delivery not unloaded of the Products to the Alternative Location shall constitute delivery to Distributor of the Products.
- 5.13 The Parties hereby agree that unless Distributor notifies *** in writing within thirty (30) days from the date of delivery of any material discrepancy in the Product, Distributor shall accept the Product on delivery.
- 5.14 Distributor may not cancel, terminate, suspend performance of, or issue a hold on any Order which has been accepted by ***, in whole or in part, without the prior written consent of ***, which consent if given, shall be on terms and subject to the fees specified. *** shall be entitled to cancel or suspend an Order at any time, or require Distributor to pay cash on delivery or other prepayment of Charges, in the event that any event analogous to those set out in Clause 13.3 occurs.

6 RETENTION OF TITLE

- 6.1 Title in the Hardware shall pass to Distributor forthwith upon payment in full by Distributor of all relevant outstanding Charges otherwise title in the Products shall remain with *** at all times. In circumstances where the Products contain Software, the Software shall be licensed on a right to use basis. All Intellectual Property rights in the Products shall remain the property of ***.
- 6.2 Notwithstanding the retention of title in the Products by *** in accordance with Clause 6.1, risk of loss or damage to any consignment of Products shall pass to Distributor from the time the Products have been delivered in accordance with Clause 5.10 or in the event that Clause 5.12 applies, at the point at which the Products are loaded for delivery to the Alternative Location.

7 PAYMENT FOR THE PRODUCTS

- 7.1 In consideration of the provision of the Products in accordance with the provisions of this Agreement, Distributor shall pay to *** the charges (subject to such discounts as may be agreed in writing by *** from time to time) set out in ***'s price list from time to time (the "Charges"). *** shall supply Distributor with an up-to-date copy of the price list for the Products from time to time.
- 7.2 Distributor shall be responsible for arranging, and shall be liable to pay for all costs of, transportation and insurance for the Products from the named place. In the event that *** agrees to arrange for transport and insurance for the Products, Distributor shall reimburse *** the full costs thereof and all the applicable provisions of this Agreement shall apply with respect to the payment of such costs as they apply to payment of the Charges.
- 7.3 *** shall invoice Distributor at the time of shipment of the Products and such invoice shall include the Charges, the Support Fee (if any) and any amounts due for transportation and insurance (if any). Payments in respect of amounts due to *** under this Agreement shall be made within thirty (30) days from issue of the invoice regardless of whether Distributor has received payment from its End Users.
- 7.4 All amounts due to *** are exclusive of any applicable VAT or other sales tax and of any other duties, levies or other charges relating to the importation and resale of the Products in the Territory and Distributor shall be liable for same.

- 7.5 If Distributor fails to pay any amount due to ***, in whole or in part, by the due date, *** shall be entitled (without any liability whatsoever and without prejudice to any other right or remedy it may have) to:-
- 7.5.1 cancel or suspend any further delivery to Distributor under any Order;
 - 7.5.2 sell or otherwise dispose of any Products which are the subject of any Order by Distributor, whether or not appropriated thereto; and
 - 7.5.3 charge Distributor interest from day to day in respect of the late payment of any sum due under the Agreement (after as well as before judgment) at the rate of 200 basis points above EURIBOR rate (based on a 360 day year) available to *** on the date interest first becomes due (or if there is no such rate, the nearest equivalent rate as determined by *** at its sole discretion) compounded quarterly from the due date until the date of actual payment. Such interest shall be payable by Distributor to *** on demand.
- 7.6 No claims for or deductions in respect of expenses incurred by Distributor in the performance of its functions and duties under this Agreement shall be made or allowed except where expressly agreed to beforehand in writing by ***.
- 7.7 Payment for the Products and the Second Line Support Services shall be made in full and without deduction, set off or counterclaim notwithstanding that Distributor may have a claim against ***.

8 INTELLECTUAL PROPERTY

- 8.1 All proprietary rights to any Know How and Intellectual Property in the Products shall be and at all times and for all purposes remain vested in *** and its licensors.
- 8.2 In the event that any Results evolve out of or in connection with or as a result of this Agreement, Distributor acknowledges that the Results including the Know How and Intellectual Property contained therein shall be the sole property of *** or its licensors as appropriate.
- 8.3 Distributor has no rights in or to the Products or the Results or any Know How, or Intellectual Property contained therein or any goodwill associated therewith, save the right to resell the Products as permitted by this Agreement. The Reseller shall not in any way, identify itself as the owner of the Products or the Results or any of the Know How or Intellectual Property owned by *** or any other party.
- 8.4 Distributor shall not do or authorise any third party to do any act which would or might be inconsistent with any Intellectual Property of *** and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 8.5 Distributor shall indemnify *** and keep *** fully and effectively indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature (including reasonable attorneys fees) arising out of or in connection with or consequent upon any commingling by Distributor of the Products with any third party products.
- 8.6 *** hereby authorises Distributor to use the Trade Marks in the Territory or in relation to the Product for the purposes only of exercising its rights and performing its obligations under this Agreement.
- 8.7 Distributor shall not without the prior written consent of ***:
- 8.7.1 sell the Products otherwise than under the Trade Marks;
 - 8.7.2 make any temporary or permanent reproduction by any means and in any form, in whole or in part, of the Software;

- 8.7.3 make any translation, adaptation, arrangement or any other alteration of the components;
 - 8.7.4 reverse assemble, reverse compile, reverse engineer or adapt the whole or part of the Products;
 - 8.7.5 delete, amend, conceal, remove or otherwise alter any copyright or any Trade Mark notices, numbers, markings, indications of origin or other means of identification, or other ownership notices or legends or any notices relating to the Intellectual Property displayed, contained in, attached to or associated with the Products;
 - 8.7.6 use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of *** therein; or
 - 8.7.7 use in the Territory any trade marks or trade names so resembling any Trade Marks as to be likely to cause confusion or deception.
- 8.8 Distributor will indemnify *** and hold *** harmless against any loss, costs or damages suffered by ***, either directly or indirectly which arise as a result of any breach of ***'s or any third party's Intellectual Property rights by use or access of the Products by Distributor other than in accordance with the terms and conditions of this Agreement.

9 **CONFIDENTIALITY**

- 9.1 The Parties hereby agree that the Mutual Non-Disclosure Agreement shall apply with full force and effect to this entire Agreement and that all information and documentation disclosed by either Party hereunder shall be subject, without limitation, to the Mutual Non-Disclosure Agreement. It is acknowledged and agreed by the Parties that the definition of "The Purpose" set out in the Mutual Non-Disclosure Agreement shall be amended to include each Party's respective obligations, roles and responsibilities under this Agreement and so that the contractual and business relationship hereunder and these terms and conditions are Confidential Information.
- 9.2 The Parties further agree that, as of the Effective, Date, the term of the Mutual Non-Disclosure Agreement shall be extended to take effect for the entire term of this Agreement and shall have effect for the Initial Term of this Agreement including any renewals or extensions thereto.

10 **WARRANTIES AND INDEMNITIES**

- 10.1 *** warrants that the Products shall for a period of thirty (30) days from the date of delivery substantially conform to the rel***t specifications therefore published by ***. Any third party product which is purchased by Distributor from *** shall carry the original supplier's warranties unless stated otherwise by ***.
- 10.2 Where there is a breach of the warranty at Clause 10.1 Distributor's sole remedy and ***' sole liability shall be, at the option of ***, replacement of the Product; or repair of the Product to ***'s satisfaction provided that Distributor has notified *** and returned the Product within fifteen (15) days from the expiry of the warranty period. If *** in its reasonable judgement is not able to exercise any of the options set out in this Clause 10.2 within sixty (60) days from the date it received the returned Products, then *** shall accept return of the Product(s) in question and return all Charges paid by Distributor in respect of the returned Product.
- 10.3 Except as expressly provided herein, all conditions and warranties (express or implied, statutory or otherwise) are excluded by *** including without limitation any warranties implied by the Sale of Goods Act, 1892 as amended by the Sale of Goods and Supply of Services Act 1980. Without prejudice to the generality of the foregoing, *** does not warrant that the Products will achieve any intended result or that the operation by Distributor of the Products will be uninterrupted or error free.

- 10.4 For the avoidance of doubt, *** shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the following circumstances:
- (a) any use of the Products by Distributor other than in accordance with the terms of this Agreement;
 - (b) use of the Products for a purpose for which they were not designed;
 - (c) any temporary or permanent reproduction by any means and in any form, in whole or in part, of the Software;
 - (d) any damage to the Products whilst in transit;
 - (e) any reverse assembly, reverse compilation, reverse engineering or adaptation of the whole or part of the Products;
 - (f) alteration, modification, adjustment, translation, adaptation or enhancement made by Distributor to the Products or any combination, connection, operation or use of the Products with any other equipment, software or documentation;
 - (g) any dissemination, sale, hire, lease offer or exposure for sale or distribution of the Products;
 - (h) any instructions or specification issued by Distributor to ***;
 - (i) any breach by Distributor of its obligations under this Agreement or of ***'s Intellectual Property rights; or
 - (j) any act, omission, negligence, fraud or default of or by Distributor or its officers, employees, agents or contractors.
- 10.5 This Clause 10 sets out Distributor's exclusive remedy and ***'s sole liability in respect of any breach of warranty.

11 **LIMITATION OF LIABILITY**

- 11.1 Neither Party's liability to the other for death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence shall be limited.
- 11.2 Subject to Clause 11.1, ***'s maximum aggregate liability under or in connection with this Agreement in any one calendar year during the term of this Agreement shall be limited to direct damages of an amount equal to the amount of the Charges paid by Distributor to *** pursuant to this Agreement in that calendar year.
- 11.3 Subject to Clause 11.1 above, *** will not be liable for the following loss or damage however caused and even if foreseeable by ***:
- (a) economic loss, which shall include loss of profits, business, revenue, goodwill, or anticipated savings;
 - (b) special, indirect or consequential loss;
 - (c) loss arising from any claim made against Distributor by any other person including any End User;
 - (d) loss or damage arising from Distributor's failure to fulfil Distributor's responsibilities or any matter under Distributor control;
 - (e) loss of any data or information and damage arising out of such loss; or

- (f) loss arising from any combination of the Products with third party products in accordance with Clause 8.5.
- 11.4 *** shall be discharged of liability in respect of any claim arising out of any transaction subject to these terms, whether in contract, tort or otherwise, unless formal commencement of legal proceedings is brought twelve (12) months after Distributor first becomes (or should reasonably have become) aware of the facts that constitute the cause of action, except in respect of liability under Clause 11.1 above.
- 11.5 If a number of defaults give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 11.6 For the avoidance of doubt, *** shall not be responsible for acts or defaults of Distributor or of the employees or representatives of Distributor.
- 11.7 Distributor shall indemnify and keep *** fully indemnified from and against all liabilities (whether civil or criminal), losses, actions, proceedings, costs, claims, demands and expenses brought or made against or incurred by *** as a result of a breach of this Agreement by Distributor including any act, omission and neglect or default of Distributor's servants, agents or employees.
- 11.8 Distributor shall indemnify and keep *** fully indemnified from and against all liabilities, losses, actions, proceedings, costs, claims, demands and expenses brought or made against *** by any End User save to the extent such claim results from the negligence or default of ***.
- 11.9 Nothing in this Clause shall confer any right or remedy upon Distributor to which Distributor would not otherwise be legally entitled.
- 12 FORCE MAJEURE**
- 12.1 If either Party is affected by a Force Majeure it shall forthwith notify the other Party of the nature and extent thereof.
- 12.2 Neither Party shall be deemed to be in breach of its obligations hereunder, or otherwise be liable to the Party not in default by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the Party not in default and the time for performance of that obligation shall be extended for the duration of such Force Majeure.
- 12.3 If the Force Majeure in question shall continue for more than twelve (12) weeks then the Party not in default shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of an event of Force Majeure.
- 13 TERM AND TERMINATION**
- 13.1 This Agreement shall commence on the Effective Date and shall continue for the Initial Term unless terminated earlier in accordance with its terms. The Parties may extend the term of the Agreement beyond the Initial Term by mutual agreement in writing.
- 13.2 Either Party may terminate this Agreement if the other breaches any of the terms of this Agreement and where such breach is capable of remedy fails to remedy such a breach within thirty (30) days of receipt of written notice from the non-breaching Party.
- 13.3 Either Party shall be entitled to terminate this Agreement without prejudice to its other rights and remedies forthwith by notice in writing to the other, if that other is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or compounds with or convenes a meeting of its creditors, or has a receiver or manager, or administrative receiver or an administrator or examiner appointed over its assets, or ceases for any reason to carry on business, or takes or suffers

any similar action which in the opinion of the Party giving notice, means that the other Party may be unable to pay its debts as they fall due.

- 13.4 *** may terminate this Agreement forthwith if Distributor undergoes a Change of Control without the prior written consent of ***.
- 13.5 Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any further breach of the same or any other provision thereof.
- 13.6 All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

14 **CONSEQUENCES OF TERMINATION**

14.1 Upon the termination of this Agreement for any reason:-

14.1.1 *** shall be entitled (but not obliged) to repurchase from Distributor all or part of any stocks of the Products then held by Distributor at their invoice value provided that:-

- (a) *** shall be responsible for arranging and liable to pay the cost of transport and insurance; and
- (b) Distributor may retain and sell any stocks of Products for which it has accepted orders from End Users prior to the date of termination, or in respect of which *** does not, by written notice given to Distributor within ten (10) Business Days from and including the date of termination, exercise its right of re-purchase, and for this purpose and to that extent the provisions of this Agreement shall continue in full force and effect;

14.1.2 Distributor shall cease to promote, market, advertise, resell or distribute the Products or to make any use of the Trade Marks other than for the purpose of selling stocks of Product in respect of which *** does not exercise its rights of re-purchase and Distributor shall not use any trade mark, brand or device in respect of the Products which is similar to or confusing with the Trade Marks;

14.1.3 Distributor shall not submit any further Orders in respect of the Products;

14.1.4 Distributor shall at its own expense within ten (10) days of termination of this Agreement either send to *** or otherwise dispose of (in accordance with the directions of ***) all samples of the Products and any documentation, advertising, promotional, sales material, catalogues, instruction books or technical pamphlets relating to the Products then in the possession, or under the control of Distributor;

14.1.5 *** shall be entitled to repossess such stocks of Products purchased by it and advertising, promotional and other material. Distributor hereby grants an irrevocable licence to ***, its employees, agents or representatives to enter upon any premises where such items are stored or where they are reasonably thought to be stored for the purposes of repossessing them;

14.1.6 outstanding unpaid invoices rendered by *** in respect of the Products which have been delivered to Distributor and in respect of which *** has not exercised its right under Clause 14.1.1 above and invoices in respect of Products ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice. The expiry or termination of this Agreement shall not effect the obligation of Distributor to pay to *** monies in respect of the Products received by Distributor following such expiry or termination;

14.1.7 Distributor shall have no claim against *** for compensation for loss of resale or distribution rights, loss of profits or goodwill or any similar loss.

14.1.8 Distributor agrees to indemnify and keep *** fully indemnified from and against all liabilities, losses, actions, proceedings, costs, claims, demands and expenses brought or made against or incurred by *** as a result of the termination of this Agreement.

15 **DISPUTE RESOLUTION**

15.1 Any dispute or controversy between the Parties with respect to the interpretation or application of any provision of this Agreement or the performance by *** or Distributor of their respective obligations hereunder will be resolved as provided in this Clause 15.

15.2 The Parties may, by mutual agreement, attempt to resolve their dispute, claim or controversy in an amicable manner where either Party serves notice requesting a meeting to effect resolution of a dispute, claim or controversy in the following manner:

15.2.1 ***'s CEO and Distributor's representative or *** shall consult in good faith during a ten (10) Business Day period to reach a just and equitable solution to the dispute, claim or controversy;

15.2.2 in the event of a dispute, claim or controversy which is not resolved within such ten (10) Business Day period by the parties referred to in sub-Clause 15.2.1, ***'s CEO and Distributor's CEO shall be obliged to mediate the dispute and seek a resolution during the next ten (10) Business Day period. The joint and mutual decision of such officers shall be conclusive; and

15.3 If a dispute is not resolved pursuant to the escalation procedure set out in sub-Clauses 15.2.1, and 15.2.2 above, then the dispute resolution procedure will be deemed exhausted in respect of the dispute in question.

15.4 During the course of negotiations, all reasonable requests made by one Party to the other for non-privileged information, reasonably related to the dispute, claim or controversy, will be honoured in order that each of the Parties may be fully advised of the other's position.

15.5 Proposals and information exchanged during the informal proceedings described in this Clause 15 between the Parties will be privileged, confidential and without prejudice to a Party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, will be considered settlement discussions and proposals, and will be inadmissible in any subsequent proceedings.

15.6 Neither Party may commence formal dispute resolution proceedings pursuant to Clause 29 without first observing the procedures set forth in this Clause 15, provided however that nothing in this Clause 15 shall prevent either Party from instituting proceedings against the other Party in any court of competent jurisdiction for an injunction, temporary restraining order or other similar equitable relief required to enforce the terms of this Agreement. Nothing in this Clause 15 shall prejudice the right or entitlement of either Party implied by the Statute of Limitations Act, 1957 (as amended).

16 **BINDING ON SUCCESSORS**

This Agreement shall be binding upon and enure to the benefit of the respective Parties hereto and their respective personal representatives, successors and permitted assigns.

17 **WAIVER**

The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

18 **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts each of which when executed and delivered shall constitute an original and all such counterparts together constituting but one and the same instrument.

19 **NO PARTNERSHIP**

Nothing contained in this Agreement and no action taken by any of the Parties to this Agreement shall constitute or be deemed to constitute a partnership or the relationship of employer and employee between the Parties hereto or constitute or be deemed to constitute Distributor as agent of *** for any purpose whatsoever and Distributor shall have no authority or power to bind *** or to contract in the name of and create a liability against *** or to pledge or purport to pledge ***'s credit in any way or for any purpose.

20 **NON-SOLICITATION**

The Parties agree that, both during the continuance of this Agreement and for a period of twelve (12) Months thereafter, they shall not solicit or endeavour to solicit or entice away from the service of the other any person employed by that other Party under or in connection with this Agreement, whether or not an employee would commit a breach of his employment contract in doing so.

21 **ASSIGNMENT AND SUB-LICENSING**

Distributor shall not assign, mortgage, charge or dispose of any of its rights or obligations hereunder or sub-contract or otherwise delegate any of its obligations hereunder without the prior written consent of ***. *** shall be entitled to assign and transfer all or any of its rights and obligations hereunder on notice to Distributor and such assignee or transferee shall be entitled to enforce the same against Distributor as if it were named in this Agreement as ***.

22 **NOTICES**

Any notice, request, instruction or other document to be given hereunder shall be delivered by hand or sent by prepaid post or by facsimile or email transmission (such facsimile or email transmission notice to be confirmed by telephone or voicemail message made, and by letter posted, within twelve (12) hours) to the address, the facsimile number or the email address of the other Party set out in this Agreement (or such other addresses or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery or in the case of post, facsimile or email transmission seven (7) days after dispatch.

Notices to ***:

***e

Notices to Distributor:

Attention:
Address: []
Telephone Number.
Facsimile Number: []
Email Address: []

23 **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, supersedes all previous agreements and understandings (if any) between the Parties in respect of such matters, may not be modified except by an instrument in writing signed by the duly authorized representative of the Parties. Each of the Parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representations or warranties except for those contained in this Agreement and all representation, conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

24 **INVALIDITY AND SEVERABILITY**

If any provision of this Agreement shall be found by any court or administrative body or competition authority of any competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. Both Distributor and *** hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

25 **VARIATION**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties hereto.

26 **ANNOUNCEMENT**

No announcement or disclosure regarding all or any part of the transactions contemplated by this Agreement shall be made by any Party hereto without the prior written approval of the other Party save for any such announcement as is required to be made under any applicable law in which case the announcement shall be made only after consultation with the other Party and after the other Party has, where practicable, been given the opportunity to approve such announcement.

27 **INDEPENDENT CONTRACTOR**

The relationship between *** and Distributor is that of independent contractor. Neither Party is agent for the other, and neither Party has authority to make any contract, whether expressly or by implication, in the name of the other Party, without that other Party's prior written consent for express purposes connected with the performance of this Agreement.

28 **HEADINGS**

Headings to Clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

29 **GOVERNING LAW AND JURISDICTION**

This Agreement will be governed and construed in accordance with the laws of the state of Florida and the United States of America and the Uniform Commercial Code where applicable and Distributor hereby agrees that for the benefit of *** and without prejudice to the right of *** to take proceedings before any other court of competent jurisdiction, that the courts of Broward County, Florida shall have jurisdiction to hear and determine any suit, action or proceedings that might arise out of or in connection with this Agreement and for such purposes Distributor irrevocably submits to the jurisdiction of such courts.

30 **PROCESS AGENT**

Distributor hereby irrevocably authorises and appoints **** (or other such person resident in the United States as it may by notice to *** substitute) (the "Process Agent") to accept service of all legal process arising out of or in connection with this Agreement, and service on the Process Agent (or such substitute as aforesaid) shall be deemed service on Distributor. Distributor agrees that failure by its Process Agent to notify it of the process will not invalidate the proceedings concerned.

IN WITNESS WHEREOF, the partners have executed this Distributor Agreement

*** *****

By: _____
*** *****

By: _____

EXHIBIT A

Products

Part A – The Products

1. Products as listed on our Company website
2. Products as agreed by

Exhibit B

Mutual Non-Disclosure Agreement

THIS MUTUAL NON-DISCLOSURE AGREEMENT is made and entered into as of the 4th day of April 2012

BETWEEN: *******, whose registered office is at _____, U.S.A. (“***”)

AND

(3) *********, whose registered office is at _____ (“Distributor”).

(“The Parties”).

INTRODUCTION

- A. The Parties wish to provide confidential information to each other for the purposes of entering into business discussions and/or technical discussions relating to certain proposed business arrangements (“The Purpose”).
- B. Such discussions will necessitate the disclosure of sufficient information concerning the business and affairs of each other and of other companies in the same group of companies as each of the parties (“the business and affairs of the parties”).
- C. Each party requires such disclosures to be treated in confidence and to be protected in accordance with the terms of this Agreement.

IT IS AGREED as follows:

- 1. The following words and phrases, where used in this Agreement, have the following meanings unless the context requires otherwise:
 - (a) “Confidential Information” includes but is not limited to commercial, financial, technical, operational or other information, in whole or in part, whether in written, electronic or any other form (including information disclosed orally), which concerns the business and affairs of the parties or the Purpose and is of a confidential nature and which is made available, supplied or disclosed to the Receiving Party before, on or after the date of this Agreement. Any oral disclosure of Confidential Information must be confirmed in writing to be confidential within ten (10) calendar days of such disclosure.
 - (b) “Disclosing Party” means the party that has made available, supplied or disclosed Confidential Information to the other party;
 - (c) “Receiving Party” means the party that has received or become aware of Confidential Information.
- 2. In consideration of the provision, supply, disclosure and development of Confidential Information by the Disclosing Party to the Receiving Party, and for a period of two (2) years from the date of the last disclosure, the Receiving Party undertakes to and covenants with the Disclosing Party that it will:
 - (a) keep the Confidential Information confidential and take proper and all reasonable measures to ensure the confidentiality of such Confidential Information treating it with the same care as the Receiving Party uses to protect its own Confidential Information

of a similar sensitivity and importance but in no event less than a reasonable degree of care;

- (b) not copy, reproduce, distribute or disclose the Confidential Information, without the prior written agreement of the Disclosing Party, to any third party other than the Receiving Party's employees or professional advisers (i) that are strictly necessary to the Purpose; and (ii) who are aware of the terms and restrictions contained in this Agreement and are bound by confidentiality restrictions of equal or greater protection than the protection afforded by this Agreement;
 - (c) c) use the Confidential Information only for the Purpose for which it was disclosed and not for its own use or for any third party's use;
3. Neither party will, without the consent of the other party, disclose to any third party the existence, nature and content of this Agreement, together with the fact that discussions are taking place concerning the business and affairs of the parties.
4. Paragraphs 2 and 3 will not apply to Confidential Information which:
- (a) is in or subsequently comes in to the public domain other than through a breach of this Agreement;
 - (b) was known to or lawfully in the possession of the Receiving Party before such Confidential Information was made available, supplied or disclosed under this Agreement;
 - (c) was obtained from a third party who is free to disclose it;
 - (d) was independently developed by the Receiving Party without the benefit of any Confidential Information received from the other party;
 - (e) is required to be disclosed by statute or judicial decree provided that the Receiving Party:
 - (i) has promptly notified the Disclosing Party in writing prior to making any such disclosure; and
 - (ii) has co-operated with the Disclosing Party in order to facilitate the Disclosing Party's efforts to obtain a protective order or other appropriate remedy from an appropriate body; and
 - (iii) will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information should the Disclosing Party fail to preclude the requesting legal body from requiring the disclosure of the Confidential Information.
5. If a party intends to use, publish or otherwise disclose any Confidential Information in reliance upon any of the exceptions set forth in Paragraph 4 of this Agreement, it will so notify the disclosing party in writing and identify the applicable exception at least (15) fifteen days prior to the intended use, publication or other disclosure.
6. All Confidential Information will remain the exclusive property of the disclosing party. No licenses or rights under any patent, registered design, copyright, know-how, data, plans, design right or any similar right belonging to either party are implied or granted under this Agreement.
7. Upon the discovery of any breach of this Agreement, the party in breach will notify the other party as soon as possible.

8. This Non Disclosure Agreement will (unless extended by mutual agreement) automatically terminate one (1) year from the date first above written, but may be terminated earlier by either party upon giving thirty (30) days notice in writing to the other party. Termination will not, however, affect the rights and obligations contained herein with respect to the Confidential Information supplied hereunder prior to termination, and such rights and obligations will survive expiration or earlier termination of this Agreement.
9. The Receiving Party will on request or termination either:-
 - (a) return all of the Confidential Information to the Disclosing Party within 10 calendar days of the request of termination; and/or
 - (b) return or destroy all copies of the Confidential Information including those held in electronic form and confirm in writing to the Disclosing Party within 10 calendar days that this has been done.
10. The disclosure of Confidential Information under this Agreement does not oblige either party to enter into any further agreements with the other party. Neither party has an obligation to disclose Confidential Information to the other party under this Agreement.
11. Neither party will export directly or indirectly any technical data acquired under this Agreement or any products produced utilising any such data to any country to which the U.S. Government or any of its agencies requires an export license or other government approval, without first obtaining such license or approval.
12. This Agreement is governed by and construed in accordance with the laws of Ireland and is subject to the exclusive jurisdiction of the Irish courts.
13. This Agreement may not be construed as a teaming, joint venture, pooling arrangement, partnership, agency or formal business organisation of any kind or other such arrangement. Nothing in this Agreement will grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.
14. This Agreement is personal to each party and may not be assigned without the prior written consent of the other party.
15. This Agreement contains the entire agreement between the parties relating to the subject hereof and supersedes any prior or contemporaneous agreements relating to the subject matter. Changes to this Agreement may be made only in writing signed by both parties. This Agreement will apply in lieu of and notwithstanding any specific legend or statement associated with any particular information or data exchanged.
16. Notices hereunder will be deemed validly given if delivered by hand, courier or by post (first class recorded delivery, with proof of posting) addressed as follows and effective upon the date of delivery:

If to ***: If to << COMPANY NAME >>

*** *****
17. This Agreement will become effective as of the date of signature of the last party to sign.

IN WITNESS WHEREOF this Mutual Non-Disclosure Agreement has been signed by the duly authorized representatives of each party

<< COMPANY NAME >>

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN DULY EXECUTED ON THE DATE
SHOWN AT THE BEGINNING OF THIS AGREEMENT.

SIGNED by
for and on behalf of

in the presence of:-

(Signature)

Witness

Address

Occupation

SIGNED by
for and on behalf of
Distributor
in the presence of:

(Signature)

Witness

Address

Occupation

DATED APRIL 4, 2012

DISTRIBUTION AGREEMENT

SUBJECT TO CONTRACT/CONTRACT DENIED