DISTRIBUTION AGREEMENT

between

National Centre for Medical Technologies **LLC**

**and**

**PARTIES**

|  |  |
| --- | --- |
| **MANUFACTURER** |  |
| Name: | National Centre for Medical Technologies LLC |
| Legal entity: | S. I. Zavhorodniy |
| Legal address: | 1 V. Makukha Str., Office 29  Kyiv, 03113, Ukraine |
| Phone: | +380 (50) 469-5763 |
| e-mail: | mail@activegel.ua |
|  |  |
| **DISTRIBUTOR** |  |
| Name: |  |
| Legal entity: |  |
| Legal address: |  |
| Phone: |  |
| e-mail: |  |

The parties have agreed on cooperation and entered into this Agreement as follows:

1. **GENERAL PROVISIONS.**
   1. The First party, hereinafter the **Manufacturer**, acting on the basis of the powers granted by National Centre for Medical Technologies LLC, code 32910330, represented by Serhii Zavhorodniy, Director, acting on the basis of the Charter, appoints the Second Party, hereinafter the **Distributor**, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director, acting on the basis of \_\_\_\_\_\_\_, as its distributor for the purchase, import and distribution of the ACTIVEGEL hydrophilic gel (for endoprosthetics of soft tissues of the human body), hereinafter referred to as the Products.
   2. Terms and Definitions:

Activegel **Products** shall mean sterile injectable implants as well as other products offered for sale by the manufacturer.

**Distributor** shall mean a legal entity or an individual entrepreneur purchasing wholesale products for subsequent sale to end customers in a designated territory.

**Exclusive Distributor** shall mean a distributor that has the exclusive right to sell the Products in a designated territory.

**Territory** shall mean the territory identified by the accepted geographical division where the Distributor operates under the distribution agreement.

**Registered Practitioner** is a healthcare professional who directly applies the Products.

1.3. The Products are industrial-scale batches, packaged and labelled according to the TECHNICAL DOCUMENTATION.

1.4. The Activegel trademark is registered in accordance with the international laws and legislation of Ukraine.

1.5. This Agreement is effective in the following territories:

* 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
  2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1.6. The purpose of cooperation: using the advantages of the Products when applied as intended and taking into account the development opportunities of the market of the designated territories, the Parties shall make every effort to obtain quantitative and qualitative results in the market development and growth. The Parties shall act on a mutually beneficial basis.

1.7. In their cooperation, the Parties shall adhere to the INCOTERMS 1990 rules for international trade.

**2. PRODUCT PRICING**

2.1. The price of the Products sold by the Manufacturer to the Distributor shall include the cost of production of the Products, safe-keeping and integrity of the Products, expert marking and packaging, customs duties, as well as other costs arising from delivery to the customs territory of the destination airport.

2.2. The currency of payment hereunder shall be USD.

2.3. The price of the Products supplied by the Manufacturer according to Clause 2.1. hereof and purchased by the Distributor shall be set out in Annex No. 1, which is an integral part hereof.

**3. TERMS, QUANTITY AND QUALITY OF PRODUCTS.**

**3.1**. The cost and quantity of the Products to be supplied by the Manufacturer and purchased by the Distributor shall be set out in Annex No. 1, which is an integral part hereof.

1. The quantity of Products cannot be reduced or cancelled.
2. A purchase order shall be placed as a preliminary request from the Distributor indicating the quantity of products and the date of the expected delivery of the goods. The Distributor shall submit the request within 14 days before the shipment of the goods. The request can be sent by e-mail or placed on the Producer’s website.
3. The number of Products may be increased by an additional agreement of the Parties.
4. The quality of the supplied Products shall fully comply with the technical documentation and be confirmed by a quality certificate issued by the manufacturer for each batch of Products.

**4. WARRANTIES AND OBLIGATIONS OF THE PARTIES.**

4.1. The Manufacturer shall:

**4.1.1**. Ensure the quality of the supplied Products within 12 months from the date of delivery, subject to their storage in accordance with the conditions specified in the manufacturer’s certificate by the Second Party and subject to the possibility to control these conditions.

4.1.2. Provide information support regarding product safety, quality and post-marketing servicing.

4.1.3. Refrain from entering into agreements with other companies for distribution within the above market territory of the Second Party, provided that the Distributor fulfils its obligations hereunder.

4.1.4 Comply with the delivery terms specified in Section 5 hereof.

4.1.5. Provide information support for the registration of the Products in the territory designated by the Distributor.

4.1.6. Provide the Products free of charge for testing and certification.

4.1.7. Timely deliver and provide logistics support of the ordered Products to the place of customs clearance of the Distributor.

4.1.8. Provide marketing support in the form of:

* Advertising and information materials in soft copy;
* Maintaining statistics on registrations of procedures;
* Analysis and identification of key brand ambassadors and their motivation;
* Publish information about the distributor on the official website of the manufacturer as well as any promotional materials.

4.1.9. Provide support to practitioners working with Activegel in the territory designated by the Distributor in the form of consulting in case of complications in accordance with the procedure for **analysing medical incidents**, as well as supplying additional Products to resolve issues.

4.1.10. Resolve disputes between distributors.

**4.2. The Manufacturer shall be entitled to:**

4.2.1. Monitor advertising campaigns, the correctness of the provision of information.

4.2.2. Monitor the activities of the Distributor using the “mystery shopper” method.

**4.2.3.** Deny distribution rights:

* in case of violation of the approved pricing policy;
* upon detecting any cases of selling counterfeit products;
* upon detecting any cases of dissemination of false information about the partners of the Manufacturer and the Products affecting the reputation of the Manufacturer;
* when distributing information about the Products without the consent of the Manufacturer;
* upon detecting cases of selling the Products in territories assigned to other distributors without the knowledge or consent of the Manufacturer.

4.3.The Distributor shall:

**4.3.1.** Ensure strict compliance with the procurement schedule, terms and conditions of payments and promptly, 14 days before the next delivery date, place the Request (quantity and scope) for the Products in writing/verbally.

4.3.2. Comply with the recommended storage conditions for the Products.

4.3.3. Coordinate the actions to obtain permits for the use and sale of the Products with the First Party.

4.3.4. Continuously notify the First Party on the performance hereof and the receipt of the information regarding suppliers and manufacturers of similar products in the territory hereunder.

4.3.5. In the course of the performance hereof, the Distributor shall select and train the required number of surgeons and other personnel, issue the certificates authorising surgeons to use the Products (only to persons with a medical degree and appropriate qualifications, who are successfully trained in the use of the Products and have the necessary conditions at the place of their future work with the Products) that comply with the laws of the territories where the Distributor operates.

4.3.6. The Distributor is liable for the intended use of the gel as well as the compliance with its storage conditions and shall not act in any manner violating the physical and chemical properties of the Products.

4.3.7. Conduct training for sales professionals of the Distributor.

4.3.8. Implement marketing activities to stimulate product sales.

4.3.9. Disseminate information about the Products and its operation in the designated territories.

4.3.10. Ensure import, customs clearance and storage of the Products, as well as maintenance of the necessary stock.

4.3.11. Provide information support for clients (registered practitioners and patients)

4.3.12. Obtain, jointly with the manufacturer, any necessary permits for the legal sale of the Products in the designated territory.

4.3.13. Comply with the approved pricing policy and refrain from price dumping.

4.3.14. Implement anti-counterfeit control and measures.

4.3.15. Provide the Manufacturer with sales data.

**4.4.** The Distributor shall not:

4.4.1. Use the Activegel trademark without the consent of the Manufacturer.



4.4.2. Use the trademark of and refer to the National Centre for Medical Technologies without the consent of the Manufacturer.



4.4.3. Release information and advertising materials without the consent of the Manufacturer or without a link to the official website of the Manufacturer, activegel.ua.

4.4.4. Release information and advertising materials without identifying itself as the Official Distributor of Activegel.

4.4.5. Produce and release its own videos without the consent of the Manufacturer

4.4.6. Distribute false information about other official distributors of the Products and about the Products in general.

4.4.7. Facilitate internal competition between distributors.

4.5. The Distributor shall be entitled to:

4.5.1. Sell the Products exclusively in the designated territory.

4.5.2. Independently set prices and regulate its margins in compliance with an agreed price policy.

4.5.3. Receive information and marketing support from the Manufacturer in the form of contacts of leads who have contacted the Manufacturer directly from the designated territory.

4.5.4. Receive remuneration for the results of work according to the **distributor’s motivation system**.

**5. TERMS OF DELIVERY.**

5.1. The Products shall be delivered CIP airport of destination within the above time limits and according to the shipping documents, i.e. a sales contract and an invoice.

5.2. The Manufacturer shall deliver the Products to the destination airport. The Distributor shall further transport the Products to the destination at its own risk and expense.

5.3. The Manufacturer shall bear the costs of delivering the cargo to the destination, ensure customs formalities, pay the necessary taxes and customs duties for the export of the Products and transfer the cargo to the carrier that ensures the delivery of the Products to the destination airport.

5.4. The Distributor shall accept the goods at the point of destination, perform customs clearance and other measures necessary for processing and receipt of the goods and bear all the necessary costs.

**6. PAYMENT TERMS.**

6.1. The Distributor shall make 100% prepayment for the Products according to the specification, and the First Party shall deliver the Products to the Second Party within 30 days upon receipt of the payment to the current account.

**7. SANCTIONS AND COMPLAINTS.**

7.1. Any claims for shortage or damage of the Products on the way to the destination airport shall be valid subject to timely execution of the report at the airport of arrival in accordance with the established International Air Carriage Rules and shall be submitted to the carrier by the Distributor. If necessary, the Manufacturer can also submit claims to the above parties on behalf of the Distributor.

7.2. Claims for damage or shortage of the Products detected as they are being loaded on board the aircraft at the airport of shipment shall be submitted to the responsible third parties by the Manufacturer and are its responsibility.

**8. FORCE MAJEURE.**

8.1. In case of force majeure, the performance hereof shall be postponed for the duration thereof. In case of a delay of more than four months due to force majeure, the Parties shall be entitled to withdraw from this Agreement.

**9. DISPUTE RESOLUTION.**

9.1. If any disputes arise out of or in connection with this Agreement, the Parties shall resolve them by the conciliation of their interests. If the disputes remain unresolved, the Parties shall submit them to the Arbitration Court of Ukraine. The decision of the Arbitration Court is final and binding on both Parties.

**10. MISCELLANEOUS.**

10.1. This Agreement is made in four copies, two in Russian and two in English, two copies for each Party.

10.2. This Agreement enters into force upon its signing by the authorised persons of the Parties and shall be valid for three (3) years.

10.3. This Agreement is a strictly confidential document.

Failure by the Second Party to comply with Clauses З.1, 4.2, 6 shall entail termination hereof.

This Agreement may be extended for another period agreed by the Parties subject to the mutual consent of the parties and the signing of the relevant documents.

The matters uncovered by this Agreement will be discussed separately.

**DETAILS:**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  | | --- | | **Seal and authorised** | | **signature of the Manufacturer:** |  |  | | --- | | National Centre for Medical Technologies LLC | | 1 V. Makukha Str., Office 29  Kyiv, 03113, Ukraine | | +38 044 501 92 48 |  |  | | --- | | **Banking Details:**  Beneficiary’s Bank:  Acc: UA923006140000026004500136337  РJSC “CREDIT AGRICOLE BANK”  42/4,Pushkinska str,  01004, Kyiv, Ukraine  SWIFT:AGRIUAUK  Correspondent Bank: | | JP Morgan Chase Bank N.A  270 Park Avenue,fl.48  New York, N.Y.,10017-2014 USA  SWIFT CHAS US33  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ S. Zavhorodniy  L.S. | | |  | | --- | | **Seal and authorised** | | **signature of the Distributor:** |   **Banking Details:** |