

THIS DISTRIBUTION AGREEMENT is dated 01.04.2018

PARTIES

- (1) **EnviteC-Wismar GmbH** a Honeywell Company incorporated and registered in Germany Schwerin with company number HRB 1838 whose registered office is at 23966 Wismar, Alter Holzhafen 18, represented by Managing director Marcus Ostländer, hereinafter referred to as

("EnviteC");

and

- (2) **Viamed Ltd.** incorporated and registered in Great Britain with company number 01291765 whose registered office is at 15 Station Road, BD20 7DT Keighley, Great Britain represented by Managing director Derek Lamb, hereinafter referred to as

("Distributor").

BACKGROUND

A. EnviteC is in the business of designing, developing, manufacturing, and/or distributing sensors and control units for monitoring of vital physiological parameters, sensors and control units for monitoring of respiratory mechanics parameters and gas exchange, measurement devices and sensors for alcohol.

B. Distributor is in the business of marketing and selling medical devices, sensors and accessories.

C. EnviteC wishes to sell certain products to Distributor for Distributor to sell to customers as set out below.

AGREED TERMS

1. Appointment

1.1 EnviteC appoints Distributor as the non-exclusive distributor for EnviteC for the products set out in Schedule 1 ("Products") worldwide (the "Territory").

1.2 In consideration of this appointment Distributor agrees to purchase the Products from EnviteC and to market and sell them in the Territory under the terms and conditions of this agreement (hereinafter "Agreement"). Distributor acknowledges and agrees that EnviteC has the right to modify or withdraw the Products from sale within the Territory on thirty (30) days written notice to Distributor without liability or causing a termination of this Agreement.

2. Terms and Conditions

2.1 Distributor agrees that EnviteC's general terms and conditions of sale as amended from time to time (hereinafter the "Terms and Conditions") apply to this Agreement and any orders for Products. The current version of the Terms and Conditions is attached in Schedule 2. Distributor acknowledges that the Terms and Conditions may be modified by EnviteC on thirty (30) days notice. In the event of any inconsistency between this Agreement and the Terms and Conditions, this Agreement shall prevail.

3. Intellectual Property; Confidentiality

- 3.1 Distributor may use EnviteC's trademarks, trade names, other marks and product names, or those of EnviteC's affiliates, in a form approved by EnviteC in writing for promotion of Distributor's sales. Use of or linkage between any of EnviteC's domain names, websites or URLs, or those of EnviteC's affiliates, and any of Distributor's must be approved by EnviteC in advance in writing. All such trademarks, trade names, other marks, product names, domain names, web sites, registrations, URLs, other proprietary information, as well as EnviteC's patents, and those of EnviteC's affiliates, are recognized by Distributor as the exclusive intellectual property of EnviteC and/or Honeywell International Inc. and its affiliates.
- 3.2 Distributor will promptly inform EnviteC of any actual or possible infringement of such intellectual property which comes to Distributor's attention. Any use, exploitation or any registration in Distributor's name, or under the name of any person in Distributor's control, direct or indirect, of any of EnviteC's intellectual property, or that of EnviteC's affiliates, in its original form or in any manner which is confusingly similar to or is infringing upon such property, without EnviteC's express written permission is forbidden, and any rights acquired in such property will be transferred to EnviteC immediately.
- 3.3 Distributor will also be responsible at all times for keeping confidential for the period of this Agreement and five (5) years thereafter all confidential and/or proprietary trade secrets or other confidential information which Distributor obtains during the performance of this Agreement and which has not been returned to EnviteC or destroyed at EnviteC's request at its termination.

4. Status; Capability; Authority

- 4.1 At all times, Distributor will act as an independent contractor. Nothing in this Agreement shall be construed as giving Distributor the authority to bind EnviteC or Honeywell Inc or its affiliates, to act as proxy or employee, to hold out Distributor as EnviteC's legal representative or to act as a co-owner or joint venturer of any kind. Distributor is solely responsible for compliance with all laws regarding the operation of the distributorship, including those regulating the importation and sale of goods, in the Territory, and Distributor shall procure all necessary permits and licenses to permit such importation at Distributor's own expense.
- 4.2 Distributor represents and warrants that (i) Distributor is validly incorporated and/or registered as required under the laws of Distributor's jurisdiction of organization; and (ii) Distributor have all the legal power and capacity necessary to conduct the distributorship and to enter into and perform this Agreement.
- 4.3 Distributor represents and warrants that Distributor will at all times
- (a) use Distributor's best endeavours to promote the sale **and after sales service** of Products in the Territory;
 - (b) if so determined by EnviteC, display advertising materials and other signs provided by EnviteC;
 - (c) maintain an adequate stock of Products **and spare parts** to satisfy demand in the territory;
 - (d) have adequate facilities and equipment and employ sufficient number of suitably qualified staff to promote the sale of Products and to fulfill Distributor's obligations under this Agreement;
 - (e) ensure any relevant staff attend any training provided by EnviteC;
 - (f) unless specifically agreed by EnviteC in writing, not change or copy or have changed or have copied the Products in any way or copy, modify or publish or have copied, modified or published any of EnviteC's documentation;
 - (g) not make any representations as to the performance, capabilities, qualities, fitness for purpose and the like of the Products except such as are contained in EnviteC's relevant catalogues and specifications;
 - (h) offer the Products for sale in the Territory in compliance with Honeywell's policies as published on www.Honeywell.com or notified to Distributor from time to time;

- (i) not provide any warranties to customers or expose EnviteC or EnviteC's affiliates to any undertakings or liabilities, other than as set out in the Terms and Conditions, and Distributor shall indemnify EnviteC and EnviteC's affiliates from any claims and damages of any kind resulting from any such exposure or extension of warranties. For the purposes of this Agreement the term 'affiliate or affiliates' means Honeywell Inc. and any company controlling or in the common control of such company; and
- (j) conduct Distributor's business in accordance with the highest business standards and shall not act in any way which may reflect adversely upon EnviteC's good name, business, integrity or goodwill.

5. Technical Assistance; Orders; Prices

- 5.1 EnviteC may from time to time, at EnviteC's option, directly or through EnviteC's affiliates, provide Distributor with technical, promotional and advertising assistance. Except where specifically agreed in writing by EnviteC prior to any activity, all costs of promotion and advertising shall be at Distributor's own expense.
- 5.2 All orders of Products are subject to EnviteC's acceptance and the Terms and Conditions. Orders must specify the
 - (i) Product number,
 - (ii) quantity of Products,
 - (iii) price of Product, and
 - (iv) expected delivery date
 and must be sent to the following addresses by fax or e-mail:

EnviteC-Wismar GmbH a Honeywell Company

Customer Support

Address: Alter Holzhafen 18, 23966 Wismar

Telephone: 49-3841-360200

Telefax: 49-3841-360222

E-mail: Sales@envitec.com

or the responsible customer service employee.

- 5.3 EnviteC's current price list and discount structure applicable to sales to Distributor is attached to this Agreement as Schedule 3 ("Price List and Discount Structure"). EnviteC may change EnviteC's price list from time to time. Orders accepted shall be at EnviteC's current prices on the date of EnviteC's confirmation. Distributor is free to set Distributor's resale prices in the Territory.
- 5.4 Except where the parties agree in writing to other conditions, the Products shall be sold in accordance with the Incoterms specified in the Terms and Conditions according to the definition of that Incoterm in the Incoterm edition applicable at the time of EnviteC's acceptance of Distributor's order.

6. Retention of Title; Claims

- 6.1 EnviteC shall retain full title to EnviteC's Products until complete payment of the purchase price for all outstanding Orders. Distributor may not therefore store or warehouse any Products which have not been paid in full outside the Territory, and in the event EnviteC terminates this Agreement or Distributor is in default of any payment or material obligations hereunder, EnviteC is entitled to enter Distributor's premises during normal business hours without the benefit of a court order and may reclaim or repossess any unpaid Products at Distributor's expense, with Distributor holding such Products as EnviteC's bailee until they are repossessed or returned. Where the Products have been processed or mixed with other substances, EnviteC shall automatically have title to such goods, with Distributor holding the goods as EnviteC's bailee to act at EnviteC's instructions until the full purchase price is paid.

- 6.2 Distributor must inform EnviteC in writing within 14 days of delivery of Products of any claimed nonconformity of the Products with EnviteC's specifications or defects in the performance of services. If Distributor fails to do so, Distributor will be deemed to have accepted the Products, and the Products shall not be subject to any claims except as otherwise provided in the Terms and Conditions.

7. Payments

- 7.1 Payments shall be made by Distributor in **Euro** by bank transfer at Distributor's expense. EnviteC will provide Distributor with EnviteC's appropriate banking information for payments in advance. Distributor will pay the invoiced amounts for the Products in accordance with the Terms and Conditions.

8. Minimum Sales

- 8.1 Each contractual year, Distributor agrees to purchase Products having a minimum purchase price (pre-tax) of at least 5.000,00 EUR for all products taken together. These minimum purchase levels shall be updated in writing by joint agreement on an annual basis.

9. Information

- 9.1 Distributor shall keep EnviteC informed of all sales in the Territory by reports in writing on a **yearly** basis, detailing the amount of sales, the trends in the market and any concerns or inquiries which customers may have in relation to Products.
- 9.2 Distributor shall provide forecasts within two months from the effective date and thereafter at the end of each calendar year quarter for the following quarter.
- 9.3 Distributor shall maintain appropriate up-to-date and accurate records to enable the immediate recall of any of the Products. These records shall include records of deliveries to customers (including details of batch numbers, delivery date, name and address of customer, and telephone number and fax or telex number if available). Distributor shall give such assistance as EnviteC shall require for the purpose of recalling as a matter of urgency any quantities of any of the Products. Access to such by EnviteC (if any) is subject to privacy legislation where applicable or obligations of confidentiality. Distributor shall forward any recall notices in respect of the Products to its customer having purchased the respective Product and ensure that its customers take note of EnviteC's recall of the Products. Distributor shall report to EnviteC about such communication with its customers.

10. Direct Sales

- 10.1 EnviteC reserves the right to sell directly into the Territory or through other distributors without payment of any fee to Distributor.

11. Non-Competition

- 11.1 Non applicable

12. International Compliance

- 12.1 Distributor warrants that Distributor is familiar with and agrees to comply at all times with Germany, EU, all United States (US), United Nations (UN) and other international or national laws or regulations concerning (i) prohibition against commercial bribery or giving anything of value to any governmental

official or candidate for political office in exchange for commercial advantage of any kind; (ii) prohibition against exporting or facilitating the export, directly or indirectly, of Products to certain countries which are embargoed by the United States or other applicable UN, international or national sanctions; (iii) prohibition against complying with the boycott of certain countries covered by US anti-boycott legislation; and (iv) transferring any technology, know how or specialized technical information to countries where the transfer is regulated by licensing laws and permitting requirements with respect to such transfers.

13. Incident reporting

Distributor represents and warrants that it will report to EnviteC

- (i) any faults, performance deficiencies or failures of Products including those from combination with other products and including also deficiencies of the information and direction for use;
- (ii) side effects, also if resulting from use in combination with other products, injuries in connection with Products ; and
- (iii) any enquires or notifications of relevant authorities

within two (2) business days of Distributor becoming aware of such issues, enquiries or notifications and, and will provide EnviteC with a detailed description of the problem in a written form. Distributor must ensure that it has a procedure in place that will ensure that Distributor becomes aware of such issues. Such notification shall be sent to envitec-service@honeywell.com at EnviteC.

14. Term and Termination

- 14.1 This Agreement shall be deemed to be in full force and effect from April 1, 2018 provided it has been executed by both parties and shall remain in effect for a period of one (1) year after the effective date and shall be renewed automatically for up to four additional one-year periods. This Agreement may be terminated by either party at the following dates: (a) during the first three years, the termination period shall be six (6) months, becoming effective at the end of a calendar year; or (b) if the Agreement has run for a period of more than three consecutive years, then the termination period shall be twelve (12) months becoming effective at the end of a calendar year. Copies completed in full and executed and exchanged by fax shall be considered originals for all purposes of this Agreement.
- 14.2 Notwithstanding the foregoing, this Agreement may be terminated by EnviteC, on fifteen (15) days written notice, at any time prior to expiration, for substantial cause, if such cause is not resolved in EnviteC's sole discretion in that period, including, but not limited to: failure to meet required minimum purchase levels as set out above, breach of duty to EnviteC, threatened or actual insolvency proceedings against Distributor or Distributor's principals, failure to pay two consecutive invoices in a timely manner, the failure to perform any other material responsibility in connection with the distributorship, or if Distributor should materially breach any laws in the territory relating to the distributorship, or is in breach of any other agreement with any company owned directly or indirectly, by Honeywell Inc. No payment, indemnity, or other compensation shall be due to Distributor as a result of termination of this Agreement for any cause. EnviteC may offset any amounts due to Distributor for such fees against any amounts owed to EnviteC.
- 14.3 In the event of force majeure as defined in the Terms and Conditions lasting more than 90 days either party may terminate this Agreement with no further obligation other than with respect to sales for Products already shipped or invoiced.
- 14.4 Upon termination for any cause, EnviteC shall except in case of Distributor's default in payment obligations fulfill all orders from Distributor for Products which have been accepted but not yet shipped, provided that EnviteC may demand payment of all outstanding invoices prior to shipment of the Products or demand different payment terms in EnviteC's sole discretion.

- 14.5 In turn on termination for any reason, Distributor agrees on first demand to resell to EnviteC at EnviteC's option all or part of the remaining Products which Distributor has in stock, sending EnviteC a precise list of such stock within eight (8) days of termination of this Agreement. Any repurchase shall be made on the basis of the stock's net book value, less transport and packaging and any other amounts owed to EnviteC. Distributor will also return to EnviteC on demand or certify as destroyed at EnviteC's option all confidential or proprietary information, trade literature and other marketing information for Products and shall immediately discontinue use of any of EnviteC's trademarks, marks, tradenames and names in any manner, and de-link any existing links with EnviteC's or EnviteC's affiliates' web sites to the extent existing at the time.

15. Liability, Indemnity, Warranty

- 15.1 Distributor agrees and acknowledges that the provisions in respect of liabilities, indemnities and warranties as stated in the Terms and Conditions shall apply.

16. Miscellaneous

- 16.1 Distributor shall be responsible for all costs and liabilities in respect of the recycling of the Products pursuant to the European WEEE Directive 2002/96/EC, or any other applicable law or regulation, as such Directive or law or regulation is implemented in the Territory. Distributor shall indemnify EnviteC in respect of all such costs and EnviteC shall produce reasonable evidence of such costs which shall be reimbursed by Distributor within 30 days of receipt of an invoice therefore.
- 16.2 Except in relation to Orders, all notices required under this Agreement shall be sent by registered mail, private courier, fax or e-mail, as evidenced by a receipt of delivery, or by registered mail, to the addresses and persons specified in Schedule 4 ("Notices"), or to such other addresses and or persons as shall have been provided in writing by either party. All notices shall be deemed to have been received on the date evidenced by the receipt of delivery, or in the absence of such a receipt, in ten (10) days after posting by registered mail.
- 16.3 Distributor shall have no right to assign the benefit of this Agreement to a third party or to delegate any authority hereunder to any persons or sub-distributors without EnviteC's prior written consent. EnviteC may, however, on notice assign EnviteC's rights and obligations hereunder, including for the fulfillment of orders, to any affiliate of Honeywell Inc.
- 16.4 If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken out for purpose of the dispute in question, but only to the extent necessary to make the remaining portion of the provision legal, valid and enforceable, if possible, and all other provisions of this Agreement shall remain in full force and effect.
- 16.5 This Agreement contains the complete agreement between EnviteC and Distributor and can be modified only in writing signed by both Distributor and EnviteC. All prior agreements, oral or written, between Distributor and EnviteC on the subject matter hereof and any affiliate or related company of Distributor are hereby superseded and cancelled.
- ## 17. Choice of Law; Jurisdiction
- 17.1 This Agreement shall be governed by **German** law without giving effect to its internal choice of law principles and also to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. Any dispute in connection with or arising out of this Agreement in the absence of an amicable resolution shall be subject to the exclusive jurisdiction of the courts of **Schwerin**, subject to EnviteC's reservation of the right to bring the dispute at its sole option under such law before the courts of competent jurisdiction in the country of Distributor's principal place of business.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, all as of the dates written below.

EnviteC-Wismar GmbH

By: *M. Ostländer*

Print (Name): Marcus Ostländer

Position: Managing Director
Duly authorized Representative

Date: *18 April 2018*

[Distributor]

VIAMED LTD

By: *S. Nixon*

Print (Name): Steve Nixon

Position: Commercial Director
Duly authorized Representative

Date: *18 April 2018*



SCHEDULE 1

EnviteC Medical Products Catalog January 2018

SCHEDULE 2

Terms and Conditions

Please refer to our General Business Terms for all products and services – www.envitec.com

SCHEDULE 3

Price List and Discount Structure

EnviteC Medical Products EURO Price List January 2018

Discount structure (List Price less Rebate):

Respiratory Gas Sensors and accessories	55%
Oxygen Monitors	38%

SCHEDULE 4

Notices

If to the Distributor:

Address: Cross Hills, 15 Station Road
City: BD20 7DT Keighley
Country: Great Britain
Tel: + 44 1535634542
Fax: + 44 1535635582
Attn: Steve Nixon
Position: Commercial Director
E-Mail: steve.nixon@viamed.co.uk

If to EnviteC:

Address: Alter Holzhafen 18
City: 23966 Wismar
Country: Germany
Tel: +49 3841 360206
Fax: +49 3841 360222
Attn: Jessica Wagner
Position: Area Manager
E-Mail: Jessica.Wagner@Honeywell.com