

## **Distribution Agreement**

between

**Anandic Medical Systems AG**

Stadtweg 24, 8245 Feuerthalen, Switzerland,  
CHE-108.103.259

“Anandic”

and

Viamed LTD

EORI NR: GB287389593000  
15 Station Road  
Cross Hills, Keighley/West Yorkshire  
BD20 7DT  
United Kingdom

**“Distributor”**

Distributor and Anandic jointly the **“Parties”** and individually each a **“Party”**

Regarding the exclusive distribution of Medker products

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## Recitals

- (A) Anandic is engaged in the sales and marketing of medical devices and has the exclusive distribution rights (with the right to appoint sub-distributors) in Switzerland, all countries of the European Economic Area, the Eastern European Countries and Australia and New Zealand for certain products manufactured by Medker Medical Electronic Tech (Shenzhen) Co Ltd ("Medker"). Medker is the legal manufacturer of the respective products in accordance with the relevant Swiss and European medical device regulations and has nominated an EU authorized representative.
- (B) Anandic wishes to sub-license its exclusive distribution rights in certain country/ies (i.e. the Territory, as hereafter defined) to Distributor and to appoint Distributor as its exclusive distributor for the respective Territory.
- (C) Distributor is engaged in the sales and marketing of medical devices in the Territory and is willing to act as importer and exclusive distributor of Anandic for the respective products in such Territory.

Now, therefore, the Parties have concluded the following agreement (the "**Agreement**"):

## 1. Distribution

### 1.1 Appointment

- (a) As of the Effective Date (as defined below) and for the duration of this Agreement, Anandic hereby appoints Distributor and Distributor accepts such appointment, as exclusive distributor for the sale and distribution of the Products (as defined below) in the Territory (as defined below). Distributor will purchase the Products from Anandic in its own name and for its own account and resell them to customers in its own name and for its own account in the Territory.
- (b) Distributor is allowed to use or appoint agents or sub-distributors for the distribution of the Products in the Territory upon its own discretion and without Anandic's explicit consent. Distributor must, however, impose upon such agents and sub-distributors substantially the same obligations it has under this Agreement. Distributor shall bear all costs of and will be held responsible towards Anandic for any act or omission performed by its agents and sub-distributors as if it had performed them itself.

### 1.2 Products and Territory

- (a) The products that are subject to this Agreement shall be the products set forth in Schedule A hereto (the "**Products**").
- (b) The geographical area covered by this Agreement is set forth in Schedule B (the "**Territory**").

(c) The Parties may agree from time to time to include further products and/or countries by amending the respective Schedules in writing.

### **1.3 Exclusivity and Non-Compete**

(a) Distributor shall act as exclusive distributor in the Territory. Anandic shall not actively supply other distributors, intermediaries or end customers in the Territory with the Products and shall restrict any distributors or other resellers of the Products appointed for countries outside the Territory from actively supplying the Products to customers based in the Territory. Distributor acknowledges, however, that passive sales of the Products by Anandic or its distributors outside of the Territory to customers in the Territory may not be prohibited.

(b) During the term of this Agreement, Distributor shall not directly or indirectly sell any products competing with the Products without Distributor's prior written consent.

## **2. Terms of Sale**

### **2.1 Forecasts**

Distributor shall at the beginning of the cooperation and at the beginning of each calendar quarter submit a written rolling forecast of its anticipated purchases from Anandic for the following twelve (12) months period. The forecast for the first three (3) months of said rolling twelve (12) month's forecast shall be considered binding ("Binding Forecast") and the forecast for the nine (9) months thereafter shall be considered non-binding (Schedule E (Forecast

#### **Ordering of Products**

(a) Distributor shall place purchase orders to Anandic by regular mail, facsimile, and/or e-mail and Anandic shall confirm an order within three (3) working days by the same means. Any order not confirmed within three (3) working days is considered to be not accepted.

(b) The estimated delivery lead time will be indicated by Anandic in the confirmation of the purchase order.

(c) The estimated date of delivery specified in the confirmation is non-binding. If Anandic believes that it will not be able to satisfy the estimated date of delivery, it shall promptly notify Distributor indicating the new estimated date of delivery. Distributor shall not be entitled to claim damages if any estimated date of delivery is not met. Distributor might, however, rescind the respective purchase order if, after setting a reasonable additional deadline for delivery, Anandic is not able to deliver the respective order.

(d) Unless otherwise agreed between the Parties, Distributor shall at all times have sufficient Products on stock in order to meet the foreseeable customer demand in the Territory for the following two (2) months.

## **2.2 Delivery, Transfer of Risk and Title**

The Products shall be delivered EXW (Ex Works) (Incoterms 2020) at the facility of Anandic in Feuerthalen, Switzerland, with risk of loss and damage and title to the Products passing to Distributor upon their proper handover to the carrier.

## **2.3 Pricing and Payment terms**

- (a) Net prices for the Products shall be set forth in Schedule A hereto. These prices are EXW (Ex Works) (Incoterms 2020) as stated in Section 2.2 above. All transportation charges, taxes, duties and other expenses arising from the purchase and importation of the Products into its Territory shall be borne by Distributor.
- (b) Anandic is free to change the prices from time to time. Any price change must be communicated to Distributor at least three (3) months in advance, and will apply to any orders placed by the Distributor after completion of such notice period.
- (c) Anandic shall have no influence on the pricing of the Products by Distributor to its customers.
- (d) All payments due to Anandic shall be paid in accordance with the payment terms set forth in Schedule C hereto.

## **3. Quality, Warranty and Liability**

### **3.1 Quality and Product Warranty**

- (a) Anandic warrants that any Product sold to Distributor hereunder shall be free from defects in design, material and workmanship at the time of delivery.
- (b) All deliveries of Products shall be examined by Distributor to verify whether they are complete and do not have any visual damage upon arrival at Distributor's facility and Distributor shall inform Anandic of any non-compliance within five (5) working days. Any defects or other non-compliances not discoverable by a visual inspection shall be notified to Anandic within five (5) working days upon Distributor's knowledge.
- (c) In the event of defects or other non-compliances, Anandic shall fulfill the warranty claim only by replacement with a defect-free Product. Any other remedy of the Distributor, including any claim for damages, shall be excluded to the fullest extent possible under applicable laws.
- (d) Any warranty claim raised by Distributor more than six (6) months after the time of delivery shall be time-barred, irrespective of whether the defect was discoverable by a

visual inspection at the time of delivery or not. If the shelf life of the Product as indicated by the legal manufacturer on the Product in question has not yet lapsed, Anandic shall upon request of the Distributor also after said six months period raise a warranty claim with Medker and if such claim is fulfilled by Medker, provide Distributor with a defect-free Product.

### **3.2 Liability**

- (a) Either Party shall be liable to the other Party for any damages incurred arising from a breach of this Agreement. Distributor shall be liable to Anandic for any acts or omissions performed by its agents and sub-distributors (if any) as if it had performed them itself.
- (b) Any liability of Anandic for defective Products is exclusively governed by Section 3.1 and any further liability for defective Products is excluded to the fullest extent possible under applicable laws

### **3.3 Insurance**

During the term of this Agreement, either Party shall procure and maintain in full force and effect proper insurance to cover its liabilities and responsibilities under this Agreement. Upon request of a Party, the other Party shall promptly provide proof of the maintenance of such insurance coverage.

## **4. Marketing Activities, Customer Support and Sales Targets**

### **4.1 Distributor's Obligations**

- (a) Distributor agrees to devote its commercially reasonable efforts to develop and promote the use and sale of the Products in the Territory. Distributor shall use commercially reasonable efforts to advertise, promote, sell, exhibit, and otherwise create a demand for the Products in the Territory at its own cost using methods that are suited best for this purpose.
- (b) Distributor shall, at its own cost, offer commercially reasonable customer support to its customers.
- (c) The Parties agree that Distributor shall meet the sales targets as set forth in Schedule D ("Sales Targets"). The Parties may agree to change these Sales Targets from time to time. If the Distributor does not meet such Sales Targets, Anandic shall be entitled to terminate this Agreement as set forth in Section 9.2.

### **4.2 Anandic's obligations**

Anandic shall provide Distributor with assistance reasonably requested by Distributor for distribution, marketing, promotional and regulatory purposes.-

#### **4.3 Review Meetings and Sales Targets**

The Parties shall regularly, but at least once per year, schedule review meetings in order to discuss marketing, regulatory and other business related topics.

### **5. Regulatory**

- (a) Either Party shall comply with the medical device regulation and any other applicable laws and regulations as amended from time to time ("Applicable Legislation").
- (b) The Parties shall comply with the requirements as set forth in Schedule E. The Parties shall consult and agree in good faith on any regulatory aspect not dealt with in Schedule E or which arises due to a change of the Applicable Legislation.

### **6. Intellectual Property**

- (a) Distributor hereby grants to Anandic the right and license to use those trademarks, service marks, trade names, and trademark registrations of Medker and/or Anandic used on or in conjunction with the Products (the "Trademarks").
- (b) Distributor shall not itself register any Trademarks. Distributor will inform Anandic of any unlawful use of the Trademarks it becomes aware of and will provide reasonable assistance to Anandic and/or Medker for its defense, if requested.
- (c) Anandic allows Distributor to make use of existing copyrights and to use and copy Anandic's promotional and other material related to the Products for the purposes of this Agreement.

### **7. Confidentiality**

- (a) Either Party agrees that it shall keep confidential and shall not publish or otherwise divulge or use for its own benefit or for the benefit of any third party any information of a confidential or proprietary nature furnished to it by the other Party for other purposes than the performance of this Agreement without the prior written approval of the communicating Party, except as required by court order or any applicable laws.
- (b) Information of a confidential or proprietary nature shall include, but not be limited to, information concerning marketing plans or materials, manufacturing processes or financial information in whatever form not generally known to the public.

### **8. Force Majeure**

- (a) In the event that a delay or failure of a Party to comply with an obligation under this Agreement is caused by a Force Majeure (as defined below) condition, that obligation shall be suspended during the continuance of the Force Majeure condition. For the

purposes of this Agreement, the term "**Force Majeure**" shall mean any condition beyond the reasonable control of the Parties, including, without limitation, fire, flood, riots, strikes, epidemics, pandemics, war, unavoidable shortage of materials, acts or defaults of carriers, embargoes, and governmental actions or decrees.

- (b) Such excuse shall continue as long as the Force Majeure event continues. Upon cessation of such Force Majeure event, the affected Party shall promptly resume performance under this Agreement.
- (c) A Party affected by a Force Majeure event will give the other Party prompt written notice, to the extent possible, of the occurrence of any Force Majeure condition, the nature thereof, and the extent to which it will be unable to fully perform its obligations under the Agreement. Such Party will use commercially reasonable efforts to resume performance or mitigate the effects of the Force Majeure event as quickly as practicable and to give the other Party prompt written notice when it is again fully able to perform such obligations.

## 9. Term and Termination

### 9.1 Term

- (a) This Agreement shall become effective on 01.01.2024 (the "**Effective Date**") and shall remain in effect for a period of two (2) calendar years (the "**Initial Term**").
- (b) The Agreement shall be extended automatically by periods of one (1) calendar year (the "Extension Period(s)"), unless the Agreement is terminated by one of the Parties with three (3) months prior written notice effective as of the end of the Initial Term and/or the Extension Period(s).

### 9.2 Termination for Cause

- (a) This Agreement may be terminated in writing for cause (important reasons) with immediate effect.
- (b) Reasons for cause for a termination by either Party are including, without limitation, the following instances:
  - (i) The other Party's breach of a material obligation under this Agreement, including but not limited to Distributor's failure to receive consent for distributing competing products (Section 1.3.1.1(b)), Distributor's failure to meet the Binding Forecast (Section 2.1) or Distributor's failure to meet a Sales Target (Section 4.1.1.1(c)).
  - (ii) The other Party's breach of any other obligation which is not remedied within sixty (60) calendar days after receipt of a written notice from the Party;
  - (iii) The other Party becomes the subject of voluntary or involuntary bankruptcy, receivership, or insolvency proceedings; and

- (iv) A Force Majeure condition has prevented performance of the contractual obligations by the other Party for more than one hundred and eighty (180) consecutive days.

## **10. Effects of Termination or Expiration**

### **10.1 Surviving Terms**

The rights of each Party against the other, which may have accrued up to the date of such termination or expiration, and the provisions of this Agreement that are by their nature continuing (including, without limitation, Section 3.2 (*Liability*) and Section 7 (*Confidentiality*)), shall remain in force and effect after any termination or expiration of this Agreement.

### **10.2 Inventory**

- (a) Upon termination or expiration of this Agreement, Distributor shall provide Anandic with a list of the Products (including their remaining shelf life) it has on stock (the "**Remaining Inventory**").
- (b) Upon Anandic's sole discretion, it may take back all or part of the Remaining Inventory at the respective purchase prices less a depreciation, provided that the Products are unused, undamaged and in their original packaging and have been stored properly. The return of the Products shall be at the expense and risk of Distributor.
- (c) Distributor is entitled to sell any Remaining Inventory of Products that Anandic is not willing to take back.

### **10.3 Customer Information**

For regulatory reasons, Distributor shall provide Anandic the names and addresses of Distributor's (and its agents' and sub-distributors') active or inactive customers that purchased Products during the term of the Agreement.

### **10.4 No Compensation upon Termination or Expiration**

Distributor acknowledges that it is granted favorable pricing terms under this Agreement allowing for a considerable margin, which also compensates Distributor for its marketing efforts in the Territory. Accordingly, Distributor acknowledges that it shall, to the fullest extent possible under applicable laws, not be entitled to any form of compensation for goodwill, clientele, sunk investment or any other compensation upon termination or expiration of this Agreement.

## **11. Relationship of the Parties**

The Parties act as independent contractors and not as agents of the other Party. This Agreement does not create a simple partnership or joint venture between the Parties and neither Party has power to act on behalf of or bind the other Party in any manner, unless explicitly authorized in writing.

## **12. Miscellaneous**

### **12.1 Entire Agreement**

This Agreement and the Schedules hereto constitute and express the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous oral or written agreements, representations, understandings and the like between the Parties.

### **12.2 Amendments and Modifications**

This Agreement may not be modified, amended, altered or supplemented, in whole or in part, except by a written agreement signed by the Parties.

### **12.3 Severability**

If any provision of this Agreement is found by any competent authority to be void, invalid or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force. In this event, the Agreement shall be construed, and, if necessary, amended in a way to give effect to, or to approximate, or to achieve a result which is as close as legally possible to the result intended by the provision hereof determined to be void, illegal or unenforceable.

### **12.4 Assignment**

The rights of the Parties under this Agreement are not assignable and shall not be transferred without the prior written consent of the other Party.

## **13. Governing Law and Jurisdiction**

### **13.1 Choice of Law**

This Agreement, including the jurisdiction clause shall be governed by, interpreted and construed in accordance with the substantive laws of Switzerland, excluding the United Nations Convention on Contracts for the International Sales of Goods of 11 April 1980 (CISG).

### **13.2 Arbitration**

The competent courts of Zurich 1, Switzerland, shall have exclusive jurisdiction for all disputes arising out of or in connection with this Agreement.

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Place, Date

**Anandic Medical Systems AG**

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Mr Arash Tehrani CEO

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Place, Date 9th January 2024

**Viamed LTD**

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Mr Stephen Nixon, Commercial Director

S. Nixon



## Schedule A: Products and Prices

Anandic Item No	Medtronic /Covidien/GE Original item No.	Description	Type	Packing unit	Distributor transfer price in € Box/25	Distributor transfer price in € per piece
MK-01	186-0106	Single use EEC sensor for measurement of the bispectral index	adult	Box of 25	275.00	11.00
MK-02	186-0200	Single use EEC sensor for measurement of the bispectral index	pediatric	Box of 25	275.00	11.00
MK-03	M1174413	Single use Entropy sensor for measurement of the bispectral index	adult	Box of 25	275.00	11.00
MK-04	186-0212	Single use EEC sensor for measurement of the bispectral index	bilateral	Box of 25	690.00	27.60

### Your distributor price for the MK-01, MK-02 and MK-03

Pieces from	To	Distributor Discount	Net Transfer Price in € Box/25	Net Transfer price per piece in €
0	10'000	20%	220.00	8.80
10'000	25'000	25%	206.25	8.25
> 25'000		30%	192.50	7.70

**Schedule B: Territory**

United Kingdom (Great Britain and Northern Ireland)

**Schedule C: Payment Terms**

The Parties agree on the following payment terms:

- (a) Payment shall be made by Distributor after date of invoice in advance for coming 6 months
- (b) Anandic can ask for pre-payment at the beginning of the cooperation, for specific purchase orders (for example tenders etc.), or in case of payment delays by the distributor.
- (c) Payments shall be made in EUR

**Schedule D: Sales Targets and Forecast (in pieces)**

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
MK-01	2000	2000	4000	2000	2000	4000	2000	2000	4000	2000	2000	4000
MK-02	200											300
MK-03	200											
MK-04												
	Binding Forecast			Non-Binding Forecast								

Targets to be agreed upon after 12 months for the next 3 years.

We will discuss the sales targets in second year after the introduction of the sensors in your market

## Schedule E: Regulatory

### Compliance with Laws and Regulations

- (a) Either Party shall carry out its activities in compliance with the medical device regulation and any other applicable laws and regulations as amended from time to time ("Applicable Legislation").

### Role of the Parties

- (b) Distributor acknowledges that Anandic acts as the importer of the Products into Switzerland but Distributor acts as importer of the Products from Switzerland into the Territory. Distributor shall comply with all requirements under Applicable Legislation applying to it as importer and distributor of the Products in the Territory.
- (c) Distributor shall ensure that the Products comply with the requirements of the Applicable Legislation for placing them on the market in the Territory and it shall ensure that any and all required licenses, registrations and notifications for the Products and its import and distribution in the Territory are obtained, unless the Parties agree that Anandic will ensure a specific registration or notification. Anandic shall provide Distributor with required information (such as declarations of conformity) and assistance upon request.
- (d) Distributor shall ensure that it indicates on the Product's packaging or in a document accompanying the Product or as otherwise required by Applicable Legislation all required information disclosing its role as importer.
- (e) Distributor acknowledges that Medker is the legal manufacturer of the Products and has appointed an EU authorized representative.

### Storage and Transport

- (a) Distributor shall ensure that it complies at all times with the storage and transport conditions for the Products as indicated by the legal manufacturer.

### Traceability and Market Surveillance

- (a) Both Parties shall keep all records required for traceability purposes in accordance with Applicable Legislation. Distributor acknowledges that it must keep records of all customers it distributes the Products to for at least ten years (or longer if required by Applicable Legislation). Distributor shall provide Anandic such information and assistance as is required to comply with its regulatory duties.
- (b) Distributor will immediately report to Anandic any complaints it becomes aware of about the quality of the Products and any notification of possible danger that may

arise from their use. Distributor shall immediately report to Anandic if it becomes aware of

- (i) any malfunction, failure or deterioration in the characteristics and/or performance of a Product delivered by Anandic;
- (ii) any inadequacy in the packaging, labeling or the Instructions For Use (IFU) of a Product delivered by Anandic;
- (iii) any technical or medical factor in relation to the characteristics or performance of a Product that could lead to a recall or Field Safety Corrective Action of a Product in the Territory;
- (iv) any serious incident relating to a Product that is reported to Distributor from any source or of which Distributor otherwise becomes aware of,
- (v) any recall action or withdrawal threatened or commenced by any governmental or regulatory authority in relation to a Product in the Territory; and
- (vi) any product liability claim or action threatened or brought with respect to the Products based on alleged defects in the design or manufacture of the Products.

(c) Both Parties (and the legal manufacturer and its EU authorized representative) shall cooperate in good faith in investigating any incident and determining the actions to be taken relating to the Product in question. Unless otherwise agreed, Anandic will forward any reports to the legal manufacturer (and/or its EU authorized representative) which shall be responsible for reporting to the regulatory authorities under the applicable vigilance regulations in the Territory. Distributor shall provide all required assistance to Anandic and/or the legal manufacturer.

(d) In case a field safety corrective action or recall of any of the Products distributed in the Territory is required, both Parties will cooperate in good faith and provide each other the required assistance.