

## **Distribution Agreement**

between

**ZOLL Medical UK Ltd**

-hereinafter referred to "ZOLL Medical UK Ltd"  
and "Viamed Ltd"  
-hereinafter referred to as "Distributor"-

**NOTE – this form of agreement will become binding on the Distributor in the manner described in clause 15**

### **Preamble**

WHEREAS, ZOLL Medical UK Ltd, of 16 SEYMOUR Court, Tudor Road, Manor Park, Runcorn, Cheshire WA7 1SY is entitled to import medical equipment manufactured by ZOLL Medical Corporation Inc, Chelmsford, Ma USA (hereinafter referred to as "ZOLL Medical Corporation")

WHEREAS ZOLL Medical UK Ltd is fully authorised to conclude an Distributor Agreement (hereinafter referred to as "Agreement") with respect to the distribution and sale of ZOLL Medical Corporation's products;

AND, WHEREAS, DISTRIBUTOR is willing to distribute ZOLL Medical Corporation products limited to resuscitation equipment and associated consumables (as defined in Appendix 1 and hereinafter referred to as "Products") to third parties residing in the Territory (see Appendix 3.)

AND, WHEREAS, ZOLL Medical UK Ltd has agreed that, NOW, THEREFORE, in consideration of the terms and conditions set forth hereunder, both parties in their full legal capacities convene and agree to the following, which does not in any way form the basis of any agreement between the Distributor and ZOLL Medical Corporation.

### **1. Appointment of the Distributor**

ZOLL Medical UK Ltd grants to the Distributor non-exclusive sales rights for the Territory with respect only to the Products, as set forth in the Product and Price List (**Appendix 1**). ZOLL Medical UK Ltd will inform the Distributor of any changes to this Product and Price List accordingly.

The Distributor shall buy the Products directly from ZOLL Medical UK Ltd in his own name and on his own account and shall then sell them to third parties residing in the Territory in his own name and on his own account. Nothing in this Agreement shall constitute a right of the Distributor to act as an agent of ZOLL Medical UK Ltd or ZOLL Medical Corporation or to represent ZOLL Medical UK Ltd or ZOLL Medical Corporation in any way whatsoever. The Distributor shall have no right to enter into any obligations on behalf of ZOLL Medical UK Ltd or ZOLL Medical Corporation.

In consideration of the non-exclusive sales rights granted to the Distributor he agrees to use his best endeavours to increase the sales of the Products in the Territory, not to sell or distribute competitive products and not to participate in any form of sales promotion of such competitive products.

In any event and for the avoidance of doubt, the Distributor agrees under no circumstances to export the Products (or to sell the Products to distributors or to any customer who buys them with the intention to export, resell or redistribute them) to ultimate destinations in countries embargoed or boycotted by the laws of the United Kingdom or the European Union.

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If the Distributor becomes aware of a sales opportunity outside of the territory he will pass on the details of this sales opportunity to ZOLL Medical UK Ltd.

### **Purchase and Sale**

ZOLL Medical UK Ltd agrees to sell the Products to the Distributor on an FOB basis at prices which are in accordance with the current price list contained in Appendix 1. ZOLL Medical UK Ltd has the right to change the prices at any time. Price changes shall become effective only 30 (thirty) days after the Distributor was notified of them by ZOLL Medical UK Ltd in writing. If the Distributor upon being notified of a price increase orders more goods than usual, ZOLL Medical UK Ltd shall have the right to invoice the Distributor with the increased prices for orders which are in excess of the quantities usually ordered. The Distributor agrees to publish an end-user price list. ZOLL Medical UK Ltd retains the sole discretion to offer to include any future products into this agreement. All purchase orders placed by the Distributor on ZOLL Medical UK Ltd will be unconditional and not contingent on the Distributor selling the products) ordered on to third parties.

All payments shall be made by the Distributor to ZOLL Medical UK Ltd within 30 days of the due date of the invoice. ZOLL Medical UK Ltd reserves the right to extend such credit to the Distributor as ZOLL Medical UK Ltd may, at its sole discretion, deem appropriate. Withdrawal of such credit will at all times be at ZOLL's sole discretion.

Clause 2 ("F.O.B, Delivery and risk of loss"), 3 ("Terms of Payment") and 1 ("Acceptance") of the "General terms and Conditions" of the Products (of Appendix 2) are an integral part of this Agreement. The "General Terms and Conditions" are subject to change by ZOLL Medical UK Ltd, giving written notice to the Distributor.

Both parties agree and understand that the non-exclusive sales rights granted to the Distributor (see clause 1.1 above) relate to the sale of the Products to customers who intend to use them for the purposes for which they are manufactured and fully in accordance with operating instructions and all applicable laws, regulations and guidelines

The Distributor agrees to make all necessary arrangements for an immediate and fast delivery to its customers and to take care that the "Use-Before-Date" on any product packaging is observed and that the Products are distributed in the same sequence in which they were received from ZOLL Medical UK Ltd.

The Distributor may not return Products unless otherwise agreed by ZOLL MEDICAL UK LTD in writing in advance. The costs for return shipments (transportation and insurance) shall be borne in any event by the Distributor.

### **Sales Promotion**

Distributor shall provide Sales Support to his customers in the Territory. Such Sales Support activities shall include in particular advising customers in product matters, handling of complaints and warranty requests and any further support activity reasonably necessary to establish and/or maintain good relations with all current, former or prospective ZOLL Medical UK Ltd customers in the Territory.

In carrying out his responsibilities in respect of this Agreement, the Distributor agrees to always act in an ethical manner and fully to comply with all current regulations, codes of practice and guidelines and all ZOLL policies and procedures which relate to interactions in the market as may from time to time be in force.

All Sales Promotion activities as contemplated under this section 4 shall be the obligation of the Distributor, without any further compensation payments due, and any material originated by the Distributor will be submitted for approval to ZOLL prior to distribution in the market.

## **Warranty**

ZOLL Medical UK Ltd does not warrant the Products supplied to the Distributor. For those Products which are warranted by ZOLL Medical Corporation in its capacity as the manufacturer, the only warranty is the one ZOLL Medical Corporation gives for the individual product. The Distributor must not stipulate any warranty terms for ZOLL Medical Corporation products other than ZOLL Medical Corporation's warranty which applies to the respective product.

In relation to his customers, the Distributor is responsible for the administration of warranty settlements in accordance with the applicable ZOLL Medical Corporation warranty terms. He must return the device for which a warranty claim is made together with the required paperwork to ZOLL Medical UK Ltd which, if necessary will forward both to ZOLL Medical Corporation for evaluation of the warranty claim. The cost for return shipments to ZOLL Medical UK Ltd (transportation and insurance) shall be borne in any event by the Distributor. The cost of return shipment will be at ZOLL Medical UK Ltd's expense.

Only ZOLL Medical authorised service personnel may carry out any technical repair or modifications to any ZOLL device. Distributors may not carry out any form of repair or modification to equipment they have purchased and or sold on to their customers unless they have undergone the required training carried out by ZOLL technical service engineers. Failure to comply will result in the warranty of the device becoming null and void and will result in the device being condemned for clinical use.

Only the manufacturer ZOLL Medical Corporation shall comment on problems encountered with its products

## **Information Requirements**

The Distributor agrees to furnish ZOLL Medical UK Ltd with a report by the Friday of the week immediately following the end of each quarter detailing the sales of the preceding quarter which state the respective unit sales and revenue amounts. In addition, the Distributor agrees to supply ZOLL Medical UK Ltd with a forecast for the forthcoming quarter by the last Friday in the preceding quarter.

## **Confidentiality**

The Distributor agrees to observe good business practices and safeguard ZOLL Medical UK Ltd's and ZOLL Medical Corporation's interests. He agrees not to disclose ZOLL Medical UK Ltd's or ZOLL Medical Corporation's trade secrets or any other information related to their products or business affairs. In return, ZOLL Medical UK Ltd agrees to not to disclose the Distributor's trade secrets or any other information relating to its business affairs. The Distributor also agrees not to enter into agreements with third parties which might affect his obligations under this clause

The Distributor agrees to secure the prior written consent of ZOLL Medical UK Ltd or ZOLL Medical Corporation if he intends to make information available to the public which contains the name or trademarks of ZOLL Medical Corporation. This applies particularly to advertisements in magazines as well as to press releases, written presentations in exhibitions booths, hand-out information and letters to customers containing other information about ZOLL Medical Corporation's products than is published by ZOLL Medical Corporation in its product literature.

## **Traceability**

The Distributor agrees to maintain Traceability of the Products by keeping in a product tracking file as a minimum the following information:

- a. Product type and serial number
- b. Date of receipt from ZOLL Medical UK Ltd
- c. Name and address of customer to which product was sold or loaned
- d. Date sold or loaned to customer
- e. Service history

The Distributor agrees also to maintain a complaint file related to the utilization of the Products in compliance with the procedure established by ZOLL Medical Corporation.

On request the Distributor shall within one week supply ZOLL Medical UK Ltd with a copy of the product tracking file and the complaint file.

### **Force Majeure**

Neither party shall be liable for non-performance of any of its obligations under this Agreement due to causes beyond its control.

In the event of such non-performance of material obligations under this Agreement due to causes beyond one party's control continuing for 6 (six) months or more, either party may terminate this Agreement without notice.

### **Duration and Termination**

This Agreement shall commence on 07/02/2014 and shall, subject to any rights of prior termination contained herein, continue until terminated at any time by either party giving to the other party thirty (30) days written notice.

Clause shall not affect the right of either party to terminate this Agreement without notice on the occurrence of a material breach of any obligation hereunder or under any of the provisions for termination.

### **Disclosure**

ZOLL operates within the requirements of the applicable codes of conduct and other regulations including those listed in Appendix 5

If any person connected with the Distributor, whether as shareholder, director, employee, consultant or otherwise, is a member, officer or servant of any public body (which for the avoidance of doubt includes any UK or Irish government department, NHS trust or Irish healthcare institution) the Distributor will procure that such person will promptly make full and proper declaration and/or disclosure of his/her interest in this contract in accordance with all applicable codes of conduct and other regulations.

### **Ethical Standards**

ZOLL is committed to conducting its business, including specifically interactions by ZOLL, its employees and its Distributors with healthcare professionals, according to the best ethical business practices and socially responsible industry conduct. As part of this policy ZOLL is committed to complying with regulations governing businesses that interact with healthcare professionals.

The Distributor shall observe, and procure that all its personnel observe, all "Relevant Codes", namely all laws, regulations and generally adopted codes of conduct (whether or not having the force of law) concerning ethical business practices and the prevention of corruption. The Distributor must identify all Relevant Codes and shall promptly notify ZOLL of these in writing. At the date of this Agreement the Relevant Codes for the Territory include

those listed in Appendix 5, the U.S. Foreign Corrupt Practices Act (FCPA) and the AdvaMed Code referred to in the following paragraph.

In respect of all territories ZOLL supports the Code of Ethics on Interactions with Healthcare Professionals, as adopted by the Advanced Medical Technology Association (AdvaMed) from time to time. ZOLL's approach to the policy is to implement the standards promulgated in the AdvaMed Code, the most recent version of which is contained in Appendix 4. Any interpretation of the provisions of this policy, as well as interactions with healthcare professionals not specifically addressed in this policy, should be made in light of the principle that the Distributor and its personnel will encourage ethical business practices and socially responsible industry conduct; and shall not engage in any unlawful inducement. Without reservation, ZOLL Medical strongly endorses both the letter and spirit of the AdvaMed Code of Ethics.

The Distributor agrees that it will adopt and comply in full with the provisions of the AdvaMed Code of Ethics when conducting business relating in any way to ZOLL's products and if requested to do so that it will sign acknowledgements from time to time that it understands and is in compliance with the provisions of this Code of Ethics. More information is found in Appendix 4 of this document and at <http://www.advamed.org>.

Failure by the Distributor to comply with any Relevant Code will be a material breach of this Agreement entitling ZOLL, without prejudice to any other remedy, to terminate this Agreement without notice.

### **Export Compliance**

ZOLL Medical UK Ltd is a wholly owned subsidiary of the ZOLL Medical Corporation, a U.S. company, and is subject to the various U.S. Export regulations that apply to the sale of its products.

At the date of this Agreement, licenses are required from the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury for the shipment of medical devices to Cuba, Iran, Syria, and Sudan.

ZOLL is also prohibited from dealing with certain listed foreign nationals and persons, who commit, threaten to commit or support terrorism.

The sanctioned countries and degrees of restrictions and the lists of Specially Designated Nationals and Terrorist Groups subject to sanctions are constantly changing. The Distributor must regularly refer to information on Sanctions Programs and Country Summaries at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac).

The Distributor undertakes to ascertain the ultimate destination of products the Distributor is purchasing from ZOLL, and to comply with the US Export regulations referred to above, and to notify ZOLL immediately if the Distributor becomes aware of attempted export to a sanctioned country or restricted individual or group.

### **ZOLL Trademark**

Distributor acknowledges that ZOLL is the owner of and holds the right, title and interest in and to the mark "ZOLL" and all other Product marks associated with the "ZOLL" mark, including the "ZOLL" name in any website domain name.

Distributor agrees that it will not use the "ZOLL" name in any website domain name without the expressed written consent of ZOLL (and if any such consent is given it shall last only while this Agreement remains in force). Subject to this the Distributor is hereby licensed while this Agreement remains in force to use the mark "ZOLL" and all other Product marks

associated with the "ZOLL" mark for the promotion and sale of Products within the Territory but not further or otherwise.

### **Miscellaneous**

This Agreement together with the Appendices attached hereto constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to the sale of ZOLL Medical Corporation products. No additional verbal arrangements have been made. Any modification or amendment to this Agreement, including this written form clause, shall only be effective if made in writing.

Should any provision of this Agreement be or become invalid or unenforceable, this shall not affect the remaining provisions. The Parties will then agree on a substituting provision which comes closest to the invalid or unenforceable one.

This Agreement shall be governed by and construed in accordance with English law.

### **Acceptance by conduct**

This form of agreement, once signed on behalf of Zoll Medical UK Ltd and delivered to the Distributor, constitutes an offer to appoint the Distributor as distributor of ZOLL Medical Corporate products on the terms set out herein. Such offer will be conclusively deemed to be accepted if the form of agreement is signed by or on behalf of the Distributor (in which case the date of the Agreement shall be the date on which it is so signed) or by the Distributor placing an order for any ZOLL Medical Corporation product after receipt of the form of agreement signed on behalf of Zoll Medical UK Ltd (in which case the date of the Agreement shall be the date on which the Distributor places such order).

AS WITNESS the signatures of duly authorised representatives of the parties or (if this Agreement comes into effect by "acceptance by conduct" as described above) the signature of the duly authorised representative of ZOLL Medical UK Ltd and the conduct of the Distributor.

Date: \_\_\_\_\_

Date: 07 / 02 / 2014

Name: Adrian Waller

Name: Derek Lamb

Office held: **PAD & Distributor Sales Manager**

Office held: Managing Director

Signature: Adrian Waller  
for and on behalf of the ZOLL Medical UK Ltd

Signature: D. Lamb  
for Distributor