



## **AGENCY AGREEMENT**

*This agreement made as of by and between*

**Biotech GmbH**, a company incorporated under the laws of Germany and having its office and place of business at Unter den Eichen 5, 65195 Wiesbaden, Germany (hereinafter referred to as "COMPANY"),

**and**

**Indeprinderea Individuala "Savga Nicolae"**, a company incorporated under the laws of Moldova and having its office and place of business at bd.Moscova, 20/2, ap.21, MD-2014 Republic of Moldova, Chisinau for (hereinafter referred to as "REPRESENTATIVE").

### **WITNESSES THAT:**

**WHEREAS**, COMPANY manufactures and sells medical products worldwide, and

**WHEREAS**, COMPANY is interested in developing business relationship in the Territory, as hereinafter defined, and

**WHEREAS**, COMPANY is willing to appoint AGENT to promote the sale of the Products, as hereinafter defined, and to distribute the Products in the Territory, and AGENT is willing to accept such appointment, and

**WHEREAS**, REPRESENTATIVE represents that it is qualified to promote and distribute the products in the Territory,

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, the Parties agree as follows:

### **I. DEFINITIONS**

In this Agreement, each term listed below has the meaning, which is given after it:





---

sale of the Products and to distribute the Products to CUSTOMERS in the Territory, subject to the terms of this Agreement.

The REPRESENTATIVE undertakes that does not distribute in the Territory such products, which are similar, or same to the COMPANY'S products specified in Annex A.

## 2.2 Promotion and Distribution

The REPRESENTATIVE shall at all times during the term of this Agreement undertake to use its best efforts to devote adequate time, skill and attention to actively and effectively promote the sale of the Products in the Territory and distribute the Products to the CUSTOMERS in the Territory.

## 2.3 Packaging

During the term of this Agreement, the REPRESENTATIVE undertakes to distribute and sell the Products in the Territory as produced and supplied by COMPANY. REPRESENTATIVE is not allowed to use other products or packaging during the time of this contract.

## 2.4 Maintenance of an Office and Inventory

During the term of this Agreement, REPRESENTATIVE shall maintain in the Territory a suitable office with appropriate full time secretarial support, and communications and logistics equipment, which shall be open on all working days during regular business hours.

The REPRESENTATIVE shall further maintain a stock of Products sufficient for minimum 6 (six) weeks to meet fully and promptly the demand therefore in the Territory.

The REPRESENTATIVE shall observe the correct rotation of the inventory according to the accounting principle FIFO (First In First Out).

## 2.5 Advertising

REPRESENTATIVE undertakes to advertise and to promote the Products using only those printed materials, including but not limited to brochures, booklets, leaflets and catalogs related to the Products, as supplied by COMPANY or with the prior written approval of COMPANY.

The marketing activity is absolutely the responsibility of the REPRESENTATIVE. COMPANY can offer free surgical demonstration, catalogues and brochures.

## 2.6 Training

COMPANY shall offer training courses on the Products - which are corresponding to the medical professional regulations and providing all information for the proper usage of Products - at such time and in such place as shall be determined by COMPANY, to assist



---

REPRESENTATIVE in maintaining informed, qualified personnel in the Territory for the promotion of the Products.

2.6.1. REPRESENTATIVE is obliged to take part in training courses held at COMPANY before starting the distribution of each new Product, otherwise once a year, at its own expense.

2.6.2. All-time COMPANY's surgical technique trainings are free of charges for the first weeks of the introduction of new products to new hospitals in the territory, but the other costs, like travelling, accommodation is the costs of REPRESENTATIVE. Longer-term surgical intervention assistances costs of REPRESENTATIVE. The remaining events will be in the Territory according to separate, written financial agreement case by case and hospital by hospital.

Above this, COMPANY may determine to hold training courses at the location of REPRESENTATIVE as well, in that case REPRESENTATIVE has to provides the suitable conditions.

After the training courses held by COMPANY or its accredited person, REPRESENTATIVE has to provide trainings - which are corresponding to the medical professional regulations and providing all information for the proper usage of Products - for the end user in Territory in order to reach appropriate usage of the Products. After these trainings any complaint due to faulty usage of the Products has to be handled by REPRESENTATIVE and responsibility has to be taken by REPRESENTATIVE. COMPANY keeps records about the training courses.

## 2.7 Prices, Terms and Conditions of Supply

2.7.1 The Products shall be sold by COMPANY or Supplier to the REPRESENTATIVE or the CUSTOMER, under the terms and conditions set forth in this Article 2.7 and under the prices, terms and conditions set forth in the acceptance of each order by COMPANY or Supplier, which are in effect at the time REPRESENTATIVE'S or CUSTOMER'S order for the Products is accepted by COMPANY or Supplier. COMPANY reserves the right to change such prices, terms and conditions of sale for the Products from the second year, at its sole discretion at any time during the term of this Agreement, subject however to the applicable rules and regulations for the fixing of such prices in the Territory.

Changes previously discussed between COMPANY and REPRESENTATIVE and jointly agreed on the market.



2.7.2 No order is binding on COMPANY until it is acknowledged and accepted in writing by COMPANY or Supplier.

2.7.3 The REPRESENTATIVE shall make the payments to COMPANY according to the order confirmation or invoice for each shipment of products.

2.7.4 It is hereby agreed that delivery and invoicing is made through the company **BIOTECH LLC**, according to the proforma invoice.

## 2.8 Warranties

The Products shall bear such warranties and guarantees as specified by EU Norms. It is the duty of the REPRESENTATIVE to take out insurance of indemnity for Products in Territory. REPRESENTATIVE have to make a product liability insurance related to users (patient and hospital).

REPRESENTATIVE have to send a copy for this insurance to COMPANY.

COMPANY give no guarantee out of Germany.

## 2.9 Claims

The REPRESENTATIVE shall immediately inform COMPANY of any situation relating to the Products that might lead to an obligation for COMPANY or Supplier to pay damages or other compensations. All claims for damages in respect of the Products brought by third parties shall be handled by COMPANY or Supplier, as determined by COMPANY, and COMPANY or Supplier, as appropriate, shall in their own discretion have the right to settle or litigate such claims. The REPRESENTATIVE shall give COMPANY or Supplier, as appropriate, all reasonable assistance in negotiations and litigations with such third parties and shall not make any admissions that might be prejudicial to COMPANY or Supplier.

## 2.10 Complaints handling

REPRESENTATIVE is obliged to obtain all necessary permissions and make announcements of the Products according to the laws of Territory, as well as to provide continual access to report unexpected events immediately. The handling of unexpected events and complaints is the duty of the REPRESENTATIVE.

It is the duty of the REPRESENTATIVE to provide permanent opportunity for reporting complaints as soon as they occur. REPRESENTATIVE has to start examining the complaint within 24 hours, or immediately, if human health is in danger, and has to inform COMPANY in written as soon as it occurs. REPRESENTATIVE is obliged to investigate the complaint with the most carefulness and to obtain the necessary objective data (such as complained product, documentation or photos), and to send a written record to COMPANY, once the



investigation is done. REPRESENTATIVE has to send all data, information, faulty product, if any, to COMPANY, which occurs during the investigation of the complaint, immediately.

In case human health is suspected to be in danger REPRESENTATIVE is obliged to make arrangements according to the laws of Territory immediately, and has to send a written report to COMPANY at once.

COMPANY takes responsibility only for complaints due to faulty products. If complaint is due to the fault of REPRESENTATIVE, or REPRESENTATIVE did not investigate the complaint properly, or REPRESENTATIVE did not send proper information to the COMPANY, then all responsibility and damage are taken by REPRESENTATIVE.

It is the duty of REPRESENTATIVE to provide the traceability of Products. REPRESENTATIVE has to make agreement with the end users to keep records on which Product was implanted in which patient, and has to be able to forward these data to COMPANY.

## 2.11 Reporting-Commercial Information

Upon execution of this Agreement, REPRESENTATIVE shall present to COMPANY a marketing activities plan indicating sales targets, commercial strategies, forecasts of purchases and any other business objectives for the upcoming year (the "Plan").

REPRESENTATIVE undertakes to keep COMPANY regularly informed with regard to its activities as concerns business development and Products Registration and the results of market research obtained from surveys or studies in the Territory and REPRESENTATIVE further undertakes to provide COMPANY with any other relevant information with respect to Products, such as awards granted on Tender Business, changes in law, government regulations, requirements and policies concerning the Products, their importation and sale into the Territory and the medical device business in general.

Said information shall be reported in such form and at such time as reasonably requested by COMPANY.

COMPANY and its auditors may inspect all relevant accounts and records of the REPRESENTATIVE relating to the sales of Products and also REPRESENTATIVE'S inventory of Products, at reasonable intervals, during working hours and upon reasonable notice.

REPRESENTATIVE have to send a monthly consumption report for the operation with implants. COMPANY want to get a list with real datas for hospital, doctor and Code of the implant.

## 2.12 Reporting-Operation Report



It is the duty of the REPRESENTATIVE to give COMPANY weekly Report in the form of OP-Consumption Declaration Form provided by COMPANY for all operations undertaken. The form has to state: name of hospital where operation took place, name of operating surgeon, date of operation and implant information from implant used in operation (Implant Sticker).

## 2.13 Product(s) Registration

Any required Products Registration or approval of the Products by governmental authorities in the Territory shall be made in the name and at the expense of COMPANY or Supplier. REPRESENTATIVE shall provide, at its own expense, such local assistance as may be required to obtain such registration or approval. It is agreed by the Parties that COMPANY shall be free to decide upon all matters concerning Products Registration including discontinuance thereof.

In the event Products Registration must be in the name of REPRESENTATIVE by the law, REPRESENTATIVE shall follow COMPANY'S directives regarding said Products Registration. In such an event, REPRESENTATIVE further agrees that, upon termination or expiration of this Agreement, it shall follow any directives from COMPANY concerning the cancellation of the Products Registration or the transfer the Products Registration to COMPANY or its nominee, and that such cancellation or transfer of Products Registration shall be effected by REPRESENTATIVE at no cost. Should the REPRESENTATIVE not take the necessary actions for the transference or cancellation of the referred registrations, it may be fined on a daily basis. Said fine shall be calculated considering the REPRESENTATIVE'S daily profit and on the basis of the average sale of each Product in the six months prior to the termination of the Agreement.

## 2.14 Expenses

Except as expressly provided otherwise in this Agreement, the REPRESENTATIVE shall bear the entire cost and expense of its performance of this Agreement, including but not limited to bad debt expenses, inventory losses, import, export and withholding taxes. In no event shall COMPANY be liable for any expenses incurred by REPRESENTATIVE, unless COMPANY has specifically agreed in writing to pay such expenses.

## III. RELATIONSHIP

### 3.1 Independent Contractor

REPRESENTATIVE is and shall be deemed an independent contractor. No employee of REPRESENTATIVE shall be deemed an employee of COMPANY. Further, nothing contained in this Agreement shall be construed to constitute REPRESENTATIVE an REPRESENTATIVE or legal representative of COMPANY, its Affiliates or Supplier for any



purpose, nor shall this Agreement be deemed to create a partnership or joint venture between the Parties.

### 3.2 Absence of Power to Represent COMPANY

3.2.1 In all correspondence and other dealings relating to the Products, REPRESENTATIVE shall clearly indicate that it is acting in its own name and for its own account. The REPRESENTATIVE expressly understands and agrees that it cannot incur any liability, pledge credit or accept any order or make any contract for COMPANY, its Affiliates or Supplier. Each purchase of Products by the REPRESENTATIVE, each sale of Products made by the REPRESENTATIVE, and each agreement or commitment made by the REPRESENTATIVE shall be for its own account as principal and at its own expense.

3.2.2 REPRESENTATIVE shall indemnify and hold COMPANY harmless against any liability for any claims, damages, costs, charges and expenses (including reasonable attorney's fees) that COMPANY may sustain or incur as a result of REPRESENTATIVE'S breach of its obligations under this article 3.2. This indemnity shall survive the expiration or termination of this Agreement.

### 3.3 Conflict of Interest

During the entire term of this Agreement, REPRESENTATIVE shall not manufacture, market, distribute, sell or promote, directly or indirectly, without COMPANY'S prior written consent, any product, which in COMPANY'S opinion, may be similar to or in competition with the Products.

REPRESENTATIVE further agrees that it shall not, without COMPANY'S prior written consent, accept to represent any company in the Territory, if such representation may in COMPANY'S opinion create a conflict of interest with the REPRESENTATIVE'S obligations hereunder. COMPANY shall not appoint any third company or other person as it's agent in the Territory during the term of the present agreement.

### 3.4 Assignment

This Agreement is personal to REPRESENTATIVE and is non-assignable and non-transferable by REPRESENTATIVE. REPRESENTATIVE is further not entitled to appoint representatives or REPRESENTATIVE'S to

perform any of its obligations hereunder. COMPANY may assign this Agreement, in whole or in part, to any of its Affiliates, at any time. Such assignment of this Agreement by COMPANY shall not increase REPRESENTATIVE'S obligations or modify REPRESENTATIVE'S rights hereunder.





## **IV. TRADEMARKS-PROPERTY RIGHTS**

### **4.1 Intellectual Property**

REPRESENTATIVE shall have no rights under this Agreement in the Trademarks, trade names, distinctive packaging, designs, copyrights, or other intellectual property rights (the “Intellectual Property”) of COMPANY or its Affiliates. REPRESENTATIVE undertakes, upon termination or expiration of this Agreement, to discontinue forthwith all use of the Intellectual Property.

### **4.2 Infringements**

4.2.1 REPRESENTATIVE shall immediately report to COMPANY any infringement of the Intellectual Property or imitation of such Intellectual Property or Products of which REPRESENTATIVE may learn. REPRESENTATIVE shall assist COMPANY, as reasonably requested, in protecting its rights in and to the Intellectual Property and against Products infringement in the Territory. REPRESENTATIVE, however, shall not initiate any action with respect to the Intellectual Property or Products infringement nor make any representations or admissions without the prior express written authorization of COMPANY.

4.2.2 The provisions set forth in this article 4.2 are equally valid and applicable for any and all complaints lodged or claims made by any third party against REPRESENTATIVE and/or COMPANY or one of its Affiliates relating in any way to the Products or the Intellectual Property in the Territory.

4.2.3 In case COMPANY gets informed that the REPRESENTATIVE, or any other affiliated company or related organization of the REPRESENTATIVE is involved directly or indirectly in a copying of the design of any of the COMPANY’S products, re-producing, marketing it or providing confidential information of the COMPANY’S products to any third party to enable this third party to re-produce and market COMPANY’S products in the TERRITORY or elsewhere, the COMPANY reserves the right to claim compensation of 1 000 000 EUR (one-million euro) per product from the AGENT and terminate the Agreement with immediate effect.

## **V. TERM AND TERMINATION**

### **5.1 Term**



This Agreement becomes effective by the date of its signature by both Parties (“Effective Date”) and shall remain in force for a period of **one year**, unless sooner terminated pursuant to another provisions of this Agreement. After one year, the Parties will re-discuss the extension of the Agreement. This Agency Agreement can be continued with a written Agreement, signed by both Parties.

## 5.2 Termination

5.2.1 This Agreement may be terminated by either Party immediately upon written notice, if the other Party fails to perform any of its duties or responsibilities or breaches any of its obligations hereunder, and such failure has not been remedied within 160 days from the receipt of written notice of such breach.

5.2.2 COMPANY may terminate this Agreement forthwith upon written notice to REPRESENTATIVE in the event that there is a direct or indirect acquisition of control of REPRESENTATIVE, or if REPRESENTATIVE is the object of nationalization or of any other action or measure having a similar effect. In the event of any such event, REPRESENTATIVE shall give COMPANY written notice prior to the effective date thereof.

5.2.3 In the event that either Party files a petition of bankruptcy or enters into insolvency or liquidation proceedings either voluntarily or involuntarily, or if a receiver is appointed with respect to the assets of such Party, or any similar action is filed by or against such Party, or such Party executes a bill of sale or deed of trust of assignment for the benefit of creditors and such measure is not dismissed within 30 (thirty) days, this Agreement shall automatically terminate.

5.2.4 This Agreement shall automatically terminate as to any Product manufactured by any party other than COMPANY, its successors or assigns, when and in the event that the distribution rights granted to COMPANY or to its successors assigns by the manufacturer of such Product are terminated.

5.2.5 Notwithstanding any other provision of this Agreement, COMPANY may, at its option, terminate this Agreement should COMPANY be prevented from effecting sales or deliveries of any of the products to any part of the Territory, for any reason including governmentally sanctioned or unofficial boycott or embargo. To the extent possible, COMPANY shall give Agent a thirty (30) days’ prior written notice of such termination of this Agreement.

5.2.6. COMPANY may terminate this Agreement forthwith upon written notice to REPRESENTATIVE in the event that REPRESENTATIVE fails to achieve the minimum turnover volumes set forth in the Article 1.4 of this Agreement.



---

## **VI. RIGHT AFTER TERMINATION AND EXPIRATION**

Upon termination or expiration of this Agreement, the following provisions shall apply:

- 6.1 a) REPRESENTATIVE shall not be entitled to exercise any rights granted by COMPANY in this Agreement;
- b) COMPANY shall honor all orders placed before date of Termination or Expiration of Agreement by REPRESENTATIVE and shall accept orders that may come as result of valid offers submitted during the validity of said offers that have been previously approved in writing by the COMPANY.
- c) The REPRESENTATIVE shall immediately return to COMPANY or destroy or cause to be destroyed any and all unused promotional or sales material relating to the Products if so requested by COMPANY.
- 6.2 The provisions of Article 3.2.2, 4.1, VI., 7.2, and 7.3 shall survive the expiration or termination of this Agreement, subject however to any limitation in time set forth in said provisions.

## **VII. GENERAL PROVISIONS**

### 7.1 Force Majeure

Performance by either Party under this Agreement shall be excused in the event and as long as such performance is impaired, prevented or delayed by Act of God, such as war, riot, insurrection, civil commotion, sabotage, strike or other labor disturbance, accident, fire, flood, earthquake, explosion that damages facilities, measure of governmental authority or any other cause unavoidable, unforeseeable and beyond the reasonable control of either Party, provided that the Party availing itself of such excuse shall resume or complete its required performance promptly after such cause has ceased.

### 7.2 Confidentiality

REPRESENTATIVE shall hold in confidence any and all information that it receives from COMPANY, its Affiliates or Supplier, or that it develops as a result of this Agreement (together the "Information"), and shall neither publish, disseminate nor disclose such Information to any third Parties, nor use such Information except for the furtherance of the purposes of this Agreement, during the term of this Agreement and for five (5) years following its expiration or termination. This obligation of confidentiality and non-use shall not apply, however, to Information:



which is or becomes part of the public domain through no fault, act, omission or breach of REPRESENTATIVE's obligation of confidentiality: or

which REPRESENTATIVE received in good faith from a third party not in violation of an obligation of confidentiality.

REPRESENTATIVE shall restrict the disclosure of the Information within its company only to those who have a reasonable need to receive such Information and shall impose this obligation of confidentiality upon all its employees who receive Information.

REPRESENTATIVE agrees, upon termination or expiration of this Agreement, to return immediately to COMPANY all Information it possesses.

### 7.3 Non-Waiver

Failure by either Party to enforce at any time for any period of time the provisions hereof shall not constitute a waiver of such provisions or of the rights of such Party thereafter to enforce such provisions, unless agreed in writing by an authorized representative of the Party sought to be charged with such waiver.

### 7.4 Notices

Any notice, document, report or other correspondence required or permitted to be made or given by either Party to the other Party shall be sufficiently made or given if sent by telex, facsimile, registered or certified airmail, postage prepaid, to the address of the Parties first above written or to such other address as a Party may from time to time advise in writing to the other Party.

A notice by telex or facsimile shall be deemed effective when sent, provided that a confirmation copy of such notice or communication is also sent by registered or certified mail. Notices sent by registered or certified mail shall be deemed effective as of the date postmarked thereon.

### 7.5 Applicable Law- Jurisdiction

This Agreement shall be governed in accordance with the laws of Germany. Any disputes, controversies or differences which may arise between the Parties in relation to the conclusion, interpretation, implementation, performance, expiration or termination of the Agreement which have not been resolved amicably, shall then be subject to the jurisdiction of the Ordinary Courts of Germany and provided that COMPANY shall not hereby be prevented from instituting proceedings in the Territory against REPRESENTATIVE.

### 7.6 Entire-Agreement

## Biotech GmbH

Unter den Eichen 5, Gebäude F, Officio II  
65195 Wiesbaden  
GERMANY

Tel.: +49 611 890 631 43  
Fax: +49 611 890 631 45  
E-mail: ag@biotech-medical.com



# BIOTECH


The terms and provisions contained in this Agreement constitute the entire Agreement between the Parties and shall supesede all previous communications, representations, agreements, or understandings, either oral or written, between the Parties hereto with respect to the subject matter hereof, and no agreement or understanding varying or extending this Agreement will be binding upon either Party hereto unless in writing, wherein this Agreement is specifically referred to, and signed by a duly authorized officer or representative of COMPANY and by the REPRESENTATIVE.

The following annexes attached hereto is considered an integral part of the Agreement:

A. Annex A: Products and Trademarks,

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in 2 copies, each an original.

Biotech GmbH  
Unter den Eichen 5 / Gebäude F  
D - 65195 Wiesbaden  
Tel. 0611 89063143 Fax. 0611 89063145  
Email: office-de@biotech-medical.com

 30.03.17  
Date Signature

Dr. Ghazi Alkaysi, Managing Director  
Name of authorized person for signature  
**BIOTECH GmbH**



24.03.2017  
Date Signature



# **Annex A**

## **Products and Trademarks**

