



Eureka Medical, Inc.

Inventor Representation Agreement

THIS AGREEMENT is made as of _____, by and between Eureka Medical, Inc., a Delaware corporation ("EUREKA"), and _____ ("Inventor"), an individual resident of the state of _____, city of _____ with offices located at _____.

WHEREAS, pursuant to the terms and conditions set forth in the Inventor Entry Agreement dated _____ between EUREKA and Inventor (the "Inventor Entry Agreement") the Inventor has submitted a New Product Idea to EUREKA, a summary of which New Product Idea is attached hereto as Exhibit A (the "New Product Idea"); and

WHEREAS, Inventor's New Product Idea has been selected by EUREKA for representation and Inventor has agreed to such representation by EUREKA.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, EUREKA and Inventor agree as follows.

1. REPRESENTATION

(a) Grant and Acceptance of License. Subject to the terms and conditions set forth herein, Inventor hereby grants to EUREKA, and EUREKA hereby accepts, an exclusive, worldwide license for the New Product Idea (the "License"). Inventor hereby expressly acknowledges and agrees that, pursuant to the License, Eureka shall have an exclusive, worldwide right and license to (i) represent the New Product Idea, (ii) sublicense the New Product Idea to one or more third parties, and/or (iii) develop, manufacture and/or sell the New Product Idea, in each case on terms and conditions acceptable to EUREKA in its sole discretion. During the Term (hereinafter defined), Inventor will not himself/herself, nor will he/she authorize any third party to represent the New Product Idea, in whole or in part, in any manner whatsoever or grant any third party any license, interest in or rights with respect to the New Product Idea.

(b) Improvements and Technical Information. Inventor will promptly communicate any improvements in the New Product Idea to EUREKA and will promptly provide to EUREKA all technical information and documentation now or hereafter in Inventor's possession or under Inventor's control relating to the use or application of the New Product Idea or any Improvements to the New Product Idea.

(c) Term. The term of the License shall be for an initial period of one year from the execution date of this Agreement (the "Initial Term") unless, during the Initial Term, EUREKA sublicenses to a third party or third parties, the New Product Idea, or notifies the Inventor of its intent to develop, manufacture and/or sell the New Product Idea itself, in which case the License shall continue for the duration of each such sublicense, or for so long as Eureka is actively in the process of developing, manufacturing and/or selling the New Product Idea, as the case may be (the "Extended Term" and, together with the Initial Term, the "Term"). If EUREKA does not sublicense the New Product Idea to a third party, or notify the Inventor of its intent to develop, manufacturer and/or sell the New Product Idea during the Initial Term, then after the Initial Term has expired, all rights in and to the New Product Idea will revert to the Inventor and, except for the right to payments as set forth in Section 1(d) below, EUREKA shall have no further rights whatsoever in the New Product Idea.

(d) In the event the License expires at the end of the Initial Term in accordance with the preceding Section, if within a period of two years following the expiration of the Initial Term the Inventor, or his or her licensees, designees, agents or representatives sells, assigns, licenses, sublicenses or otherwise places the New Product Idea with a third party or third parties identified to the Inventor by EUREKA, then the Inventor shall so inform EUREKA and shall pay to EUREKA Royalties in accordance with Section 2(a) below (with, for such purposes, the word "Inventor" in such Section being deemed replaced by the word "EUREKA" and *vice versa*). Such payments shall be made in accordance with the Payment Schedule set forth in Section 2(b) below and the Inventor shall maintain accounts and permit EUREKA to inspect the books and records of such accounts in accordance with Section 3 below (with, for such purposes, the word "Inventor" in such Sections being deemed replaced by the word "EUREKA" and *vice versa*).

2. PAYMENTS.

(a) Royalties. In consideration of the grant of the License, and for all rights and privileges granted by the parties under this Agreement, EUREKA hereby agrees, during the Term, to make payments to Inventor of the following Royalties:

- (i) For the first three months of any sublicense by EUREKA of the New Product Idea, twenty five percent (25%) of License Revenues; plus
- (ii) Following the first three months of such sublicense and for the remaining term of such sublicense fifty percent (50%) of License Revenues.

(b) Payment Schedule. Within sixty (60) days after the close of each calendar quarter during the Term, EUREKA will pay Inventor any and all Royalties owed with respect to such calendar quarter. Each such Royalty payment will be accompanied by a reasonably detailed written description of the calculation of the payment amount. All Royalties will be paid in U.S. Dollars. Any License Revenues or Sales Revenues amount expressed or invoiced in another currency will be converted, prior to computing the Royalties due with respect to such amount, from such other currency into U.S. Dollars at the conversion rate in effect on the date any License Revenues or Sales Revenues are actually received by EUREKA or, in the absence of any actual conversion, at a conversion rate which is the mean between Citibank, N.A.'s buying and selling rate for the other currency at its principal offices in New York, New York, on the last business day of the calendar quarter for which the Royalties are being determined.

3. ACCOUNTS. EUREKA will maintain complete and accurate books of account with respect to the License Revenues and Sales Revenues. Upon at least ten (10) business days prior written notice and no more than once each calendar year, Inventor (or Inventor's duly authorized representative) will be entitled to inspect such books of account, during normal business hours, at Inventor's own cost, solely for the purpose of verifying the correctness of EUREKA's payments under Paragraph 2 above. All information obtained in connection with any such inspection will be deemed Confidential Information belonging to EUREKA.

4. PROPRIETARY RIGHTS

(a) Title. Title to the New Product Idea (including all Improvements) will be and shall remain vested with the Inventor. Any improvements or enhancements to the New Product Idea and/or Licensed Products made by or on behalf of EUREKA, as between Inventor and EUREKA, will be jointly owned by EUREKA and Inventor. Neither Inventor nor EUREKA will sell, transfer or grant any rights with respect to any Joint Improvements without the express prior written consent of the other, provided however that Inventor's consent will not be required with respect to any grant of rights to a Joint Improvement by EUREKA to a third party in connection with EUREKA's exercise of its rights under the License in the granting of a sublicense to a third party or in the development of a New Product Idea by EUREKA itself.

(b) Protection. EUREKA will be solely responsible for making any additional filings and taking such other actions, if any, as EUREKA, in its sole discretion, may deem necessary or appropriate to protect Inventor's and/or EUREKA's intellectual property rights in the New Product Idea or a Joint Improvement. EUREKA will consult with Inventor with regard to the filing of any and all patent or copyright applications relating to the New Product Idea and will provide Inventor with periodic reports concerning the status of any such patents and/or copyrights. EUREKA will bear all costs and expenses incurred in connection with actions taken hereunder to protect the New Product Idea or a Joint Improvement. At EUREKA's request, Inventor will execute all required documents necessary to take such other actions, if any, as EUREKA may reasonably request of Inventor in connection with protection of the New Product Idea or a Joint Improvement.

(c) Warranty and Indemnity. Inventor warrants that he/she has conceived the New Product Idea in the form presented to EUREKA and further warrants that he/she has such right, title and interest in and to the New Product Idea as to enable it to vest in EUREKA, without any qualifications whatsoever, the sole and exclusive right, privilege and license herein conveyed. Inventor further warrants that the New Product Idea does not violate or infringe any intellectual property or other rights of others and that the execution and performance by the Inventor of his or her obligations hereunder will not violate or cause a breach of any agreement to which the Inventor is a party. Inventor shall indemnify and hold harmless EUREKA and any third party sublicensee from and against any claim of Intellectual Property (copyright, trademark and patent) infringement by the New Product Idea as a result of the use contemplated herein of the New Product Idea, in the form submitted by Inventor to EUREKA.

(d) Infringement. EUREKA will notify Inventor promptly upon becoming aware of any actual or alleged infringement of any intellectual property rights in the New Product Idea and of any available evidence thereof. Inventor will notify EUREKA promptly upon becoming aware of any actual or alleged infringement of any intellectual property rights in the New Product Idea and of any available evidence thereof. EUREKA will have the right (but not the obligation) to prosecute any such infringement at its own expense and, for such purposes, may use Inventor's name as plaintiff, either solely or jointly with that of EUREKA. Inventor hereby grants to EUREKA an irrevocable power of attorney for such purposes. Inventor will not prosecute any such infringement except with the express prior written consent of EUREKA. Inventor will cooperate fully and promptly with any such action by EUREKA. Any recovery, damages, or settlement awarded to plaintiff in such action will be applied first in satisfaction of any unreimbursed costs and expenses (including without limitation, reasonable attorney fees) incurred by EUREKA in connection with such action; and any balance then remaining will be distributed fifty percent (50%) to EUREKA and fifty percent (50%) to Inventor.

5. CONFIDENTIALITY. Each party agrees that during the term of this Agreement and thereafter (a) it will use Confidential Information belonging to the other party solely for the purpose(s) for which it was disclosed hereunder and (b) it will not disclose Confidential Information belonging to the other party to any third party (other than its employees and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein). The parties further agree that except as necessary to perform their respective obligations hereunder or otherwise expressly required by law, they will not publicly announce or otherwise disclose any of the terms and conditions of this Agreement. In the event either party is requested or ordered by a court of competent jurisdiction to disclose Confidential Information belonging to the other party, such party will give the other party immediate notice of such request or order and, at the other party's request and expense, resist such a request or order to the fullest extent permitted by law. Each party will promptly (i) return to the other upon request any or all Confidential Information of the other then in its possession or under its control and (ii) erase or otherwise destroy all computer entries containing any Confidential Information of the other then in its possession or under its control and provide the other with written certification of such erasure or destruction. The provisions of this Paragraph 5 will survive any termination of this Agreement.

6. RELATIONSHIP OF PARTIES. This Agreement and the relations established hereby between Inventor and EUREKA do not constitute a partnership, joint venture, employer/employee, agency or similar relationship between Inventor and EUREKA. Each party is acting under this Agreement as an independent party and independent contractor.

7. AMENDMENTS AND WAIVERS. None of the provisions of this Agreement may be amended or waived except by a writing signed by Inventor and EUREKA. Any waiver by either party of any breach of this Agreement by the other party is not to be deemed a continuing waiver of other breaches of the same nature or of any other provisions of this Agreement.

8. ASSIGNMENT. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. EUREKA may grant one or more sublicenses under the License upon such terms and conditions, as it may deem appropriate. Neither party may otherwise assign its rights or obligations hereunder without the express prior written consent of the other, provided that Inventor's consent will not be required with respect to any assignment by EUREKA to an affiliate of EUREKA or any successor to all (or substantially all) of EUREKA's assets.

9. NOTICES. All notices given pursuant to this Agreement must be delivered in writing by personal service or sent by nationally recognized overnight courier service or written telecommunication (subject to confirmation of receipt in complete legible form) or U.S. registered mail, postage prepaid, to the address specified on the signature pages to this Agreement (or to such other address as the addressee may direct by notice given in accordance with this paragraph).

10. REMEDIES. It is understood and agreed that all provisions of this Agreement are fundamental and essential for the protection of EUREKA's legitimate business interests, and in the event of any breach or threatened breach of the provisions of this Agreement by Inventor, EUREKA will suffer irreparable harm and its remedies at law may be inadequate. Accordingly, in the event of a breach or attempted breach of this Agreement by Inventor, EUREKA will be entitled, in addition to all other rights or remedies which may be available to EUREKA, to seek injunctive and other equitable relief, without any showing of irreparable harm or damage. In the event EUREKA seeks such relief, it shall not be required to post a bond or provide other security. All remedies available for breach of this Agreement are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

It is understood and agreed that all provisions of this Agreement are fundamental and essential for the protection of Inventor's interests, and in the event of any breach or threatened breach of the provisions of this Agreement by EUREKA, Inventor may suffer irreparable harm and its remedies at law will be inadequate. Accordingly, in the event of a breach or attempted breach of this Agreement by EUREKA, Inventor will be entitled, in addition to all other rights or remedies which may be available to Inventor, to seek injunctive and other equitable relief, without any showing of irreparable harm or damage. In the event Inventor seeks such relief, it shall not be required to post a bond or provide other security. All remedies available for breach of this Agreement are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

11. FURTHER ASSURANCES. The parties agree to execute such other documents and provide such further assurances, if any, as may be reasonably required from time to time to give effect to the provisions of this Agreement.

12. LIMITATION OF LIABILITY. IN NO EVENT SHALL EUREKA BE LIABLE TO INVENTOR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, REVENUE, DATA OR USE, OR FOR SIMILAR COSTS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON WARRANTY OR OTHER CLAIM, EVEN IF THE INVENTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNLESS EUREKA HAS ENGAGED IN WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

13. MISCELLANEOUS. This Agreement is the sole understanding and agreement between Inventor and EUREKA with respect to its subject matter and supersedes all other prior or contemporaneous oral or written agreements and understandings, including the Inventor Entry Agreement. This Agreement will be governed by and interpreted under the internal laws of the Commonwealth of Massachusetts and Inventor agrees, for any cause of action commenced hereunder, to (i) the jurisdiction of the United States District Court and state courts sitting in the City of Boston, Commonwealth of Massachusetts, and (ii) to Boston, Massachusetts, as the appropriate venue for any such action. This Agreement may be executed in separate counterparts, all of which together will constitute a single agreement. In proving this Agreement, it will not be necessary to produce or account for more than one such counterpart.

14. DEFINITIONS. For purposes of this Agreement, the following words and expressions have the following meanings:

"Affiliate" means, with respect to either party, any person or entity controlling, controlled by, or under common control with such party.

"Confidential Information" means, with respect to either party, all information in any written or other form whatsoever, relating directly or indirectly to the present or potential business, operations, corporate or financial condition of such party or to data, know-how, materials, supplier or customer lists or other similar information belonging to such party which is not at the relevant time (i) generally known to the public (through no act or omission in violation of this Agreement), (ii) furnished to the receiving party by a third party having the lawful right to do so or (iii) acquired by the receiving party from a source other than the disclosing party, provided that the receiving party immediately notifies the disclosing party of any such acquisition.

"Joint Improvements" improvements or enhancements to the New Product Idea and/or Licensed Products made by or on behalf of EUREKA, as between Inventor and EUREKA.

"Improvements" means any and all developments or improvements upon the New Product Idea which Inventor may now or hereafter, alone or with others, acquire, discover, invent, originate, conceive or have rights to, in whole or in part, whether or not such development or improvement is patentable, commercially useful or reduced to writing or practice.

"License" shall have the meaning set forth in Paragraph 1.

"Licensed Product" means any product embodying the New Product Idea, in whole or in part (whether or not it is capable of being protected under patent or copyright laws).

"License Revenues" means, with respect to any period in which royalties, licensing or sublicensing income is due and payable, any and all royalties and other licensing or sublicensing income applicable to such period unconditionally received by EUREKA or the Inventor, as the case may be, with respect to the New Product Idea from any source on account of the sublicense by EUREKA or license by the Inventor, as the case may be, of the New Product Idea.

Inventor Representation Agreement

"New Product Idea" means (1) the product concept described on Exhibit A hereto, including any and all technology, technical information, patents, inventions, know-how, trademarks, trade secrets, formulae, models, methods, designs, know-how, and materials relating thereto and (2) any and all Improvements.

"Patent Costs" means any and all costs and expenses incurred by EUREKA in connection with establishing, maintaining, defending, protecting and/or confirming the patent, copyright and/or other intellectual property rights of Inventor and/or EUREKA with respect to the New Product Idea and/or Licensed Products.

"Person" means an individual, a corporation, a partnership, a trust, an unincorporated organization, an entity or a government or any agency or political subdivision thereof.

"Royalties" means royalties payable by EUREKA pursuant to Paragraph 2 above or payable by the Inventor pursuant to Paragraph 1(d) above.

"Sales Revenues" means, with respect to any period in which revenues are due and payable on account of sales of the New Product Idea by EUREKA or the Inventor, as the case may be, the aggregate gross revenue applicable to such period unconditionally received from sales of The New Product Idea (whether or not a complete assignment of the New Product Idea), less (i) amounts repaid or credited by reason of defects, returns, rejections, rebates, retroactive price allowances or adjustments; (ii) sales, excise, value-added and other similar taxes and customs duties paid, absorbed or allowed; (iii) commissions paid or allowed to independent brokers and/or agents; (iv) packing and transportation charges (including insurance); and (v) trade and quantity discounts actually allowed and taken

"U.S. Dollars" means the currency of the United States of America.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Inventor Representation Agreement as of the date first written above.

EUREKA MEDICAL, INC.

By: _____

EUREKA employee

Print Name: _____

Title: _____

One Burlington Business Center
67 South Bedford Street, Suite 400W
Burlington, MA 01803

By: _____

Inventor

Print Name: _____

Address: _____

EXHIBIT A

NEW PRODUCT IDEA DESCRIPTION