

DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (the “**Agreement**”) is made and entered as of ~~October~~ November, 2005 (the “**Effective Date**”) by and between **AKESO HEALTH SCIENCES, LLC**, a California limited liability company (“**Akeso**”), and **QUANTUM, INC.**, a _____ corporation (“**Distributor**”) (Akeso and Distributor are collectively referred to herein as the “**Parties**” and each, a “**Party**”). Capitalized terms not defined in the main body of this Agreement are defined in the attached **Exhibit B**.

Background

- A.** Akeso manufactures and owns proprietary and patented dietary supplements and related products that it markets and sells in the United States and elsewhere around the world.
- B.** Distributor markets and sells dietary supplements to health food stores in the Territory (as defined in the attached Exhibit C), and seeks to market, sell, promote and provide Akeso’s patented preventive migraine formula for use in natural product class of trade commonly known as MigreLief (the “**Product**”) in the Market (as defined in the attached Exhibit C).
- C.** Akeso is willing to manufacture the Product for the Market, and to appoint Distributor as a distributor of the Product in the Exclusive Market (as defined in the attached Exhibit C) and as a distributor in the Non-Exclusive Market (as defined in the attached Exhibit C), and Distributor is willing to accept such appointment, as a distributor of the Product in the Market in accordance with the terms and conditions set forth below.
- D.** Concurrently herewith, and as further consideration and a condition hereto, the Parties shall enter into that certain Trademark Purchase Agreement of event date herewith.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth in this Agreement, the Parties hereby agree as follows:

1. MANUFACTURE AND BOTTLING OF PRODUCT.

1.1 Manufacture by Akeso. Distributor and Akeso agree that during the Term (defined in Section 5, below), Akeso will have the exclusive right to manufacture, and will manufacture, for Distributor the Product. Akeso will have the right, but not the obligation, to subcontract any phase of manufacturing or production of the Product or any part thereof. The price for manufacture by Akeso of the units of the Product will be as set forth in the attached Exhibit D. Akeso will deliver the Product to Distributor in bulk.

1.2 Bottling by Distributor. Distributor will bottle and package the Product with the Packaging and Instructions set forth in Section 3.2, below.

2. APPOINTMENT AS DISTRIBUTOR.

2.1 Appointment. Subject to the terms and conditions of this Agreement, Akeso hereby appoints Distributor in the Market in the Territory and during the Term, and Distributor hereby accepts appointment in the Market in the Territory and during the Term as (a) an exclusive distributor of the Product in the Exclusive Market, and (b) a non-exclusive distributor of the Product in the Non-Exclusive Market.

2.2 Sub-distributors. Distributor may not appoint sub-distributors or agents to promote, market, distribute or sell the Product, except to subsidiaries or majority-controlled affiliates of Distributor or except with the prior written consent of Akeso, which consent may be withheld in the sole and absolute discretion of Akeso.

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2.3 Marketing, Sales and Distribution Outside the Territory. Distributor agrees that no Product will be marketed, distributed or sold, directly or indirectly, by or under the authority of Distributor or any of its affiliates or approved sub-distributor to any purchasers outside the Market. Distributor agrees that it will not directly or indirectly solicit orders from or sell any Product to any person or entity outside of the Market, and Distributor further agrees that it will not directly or indirectly solicit orders for or sell any Product in any situation where Distributor reasonably should know that the Product will be resold or exported outside of the Market. Distributor agrees to take all commercially reasonable actions to keep any purchaser of the Product from marketing, distributing or selling the Product in any market outside the Market, including, without limitation, notifying all purchasers of the Product, via telephone and U.S. mail, of the Market and Territory restrictions set forth in this Agreement. Distributor agrees to establish procedures to monitor its purchasers reasonably to ensure that such purchasers are not in violation of the Market and Territory restrictions. In the event that the Distributor discovers that the Product is being re-sold by purchasers of the Product in violation of the within Market and Territory restrictions, Distributor will contact such purchasers, by telephone and U.S. mail, notifying them to immediately cease and desist sales of the Product in markets outside of the Market and Territory. Such notification shall also include a notice that such purchasers may lawfully sell the Product only pursuant to agreement with Akeso, which notice shall include Akeso's contact information. Copies of all notices in the foregoing regard shall be sent to Akeso at its address set forth in signature block of this Agreement

2.4 Restrictions. Unless expressly permitted in Section 2.1 or with the prior written consent of Akeso, which consent may be withheld in the sole and absolute discretion of Akeso, and only to the extent permitted therein, the delivery, sale or distribution of any Product, through or via electronic media, or otherwise, including without limitation, cable, fiber optic, telephone lines, microwave or radio waves, is expressly excluded from the rights herein granted to Distributor.

3. DISTRIBUTION OF PRODUCTS.

3.1 Distributor Obligations. Distributor will have the following obligations with respect to the marketing and distribution of the Product under this Agreement:

(a) To bottle the Product in accordance with Section 1.2 of the Agreement, subject to the ownership provisions and restrictions set forth in Sections 7.1 and 7.2;

~~(e) To provide Akeso, within sixty (60) days following the execution of this Agreement, with a comprehensive one-year business plan for the marketing, sale and distribution of the Product in the Market for the first year of the Term, including quantities of the Product forecasted to be sold in the Market on a quarterly basis. Distributor agrees to provide Akeso with a twelve (12) month forecast of Distributor's projected purchases of units of the Product during each calendar quarter no later than ninety (90) days prior to each quarter and to provide Akeso with any other information regarding the projected purchases of each Product as Akeso may reasonably request from time to time. Distributor will update such forecasts each quarter on a rolling basis for a new twelve (12) month period, which updated forecast must be received by Akeso no later than ninety (90) days prior to the first day of each succeeding calendar quarter. The rolling forecasts provided to Akeso by Distributor pursuant to this Section 3.1(b) will be used for purposes of facilitating Distributor's marketing plans and to meet the manufacturing and fulfillment lead-times required by Akeso; provided, however that nothing herein or in any forecast shall be construed as a purchase order or commitment.~~

~~(e)(b) To provide Akeso, within sixty-five (60.5) days after the end of each calendar quarter month and within forty-five (45.30) days after the end of the calendar year, with a report describing for the Product and for each such quarter-month or year (i) Distributor's marketing and distribution activities for the Product; (ii) sales figures for the Product; and (iii) identity of customers who purchased the Product, outstanding inventories of the Product, which report will be in a form as Akeso may reasonably require.~~

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3.2 Joint Development of New Packaging and Instructions. By no later than December 1, 2005, or upon the depletion of Distributor's current inventory of the Product, whichever occurs later, the Parties agree to jointly design and develop new packaging and instructions for the Product for the distribution of such Product in the Market (the "**Packaging and Instructions**") based on mutually agreeable artwork, design and other materials, and the retention of a mutually agreeable graphic designer. The Parties agree to equally share the costs of designing and developing the Packaging and Instructions. ~~The Packaging and Instructions will. The parties will use their best efforts to~~ utilize elements of the current packaging utilized by Distributor, namely, the three heads concept and the green band logo located at the top of the package. A reference to Quantum Health shall be included in the band. ~~Distributor acknowledges that Akeso may use the Packaging and Instructions for sales of the Product to persons other than Distributor; provided, however that the Packaging and Instructions shall be modified to remove any reference to Distributor.~~

3.3 Marketing, Advertising and Promotion. Distributor will diligently undertake to use its best efforts to promote, market, sell and distribute the Product in the Market using Marketing Materials prepared by Distributor and approved in advance by Akeso as provided in Section 3.4, below. ~~Distributor will include in the one year business plan for the marketing, sale and distribution of the Product to be submitted to Akeso pursuant to Section 3.1(b), above, its planned or proposed activities for advertising and promotion of the Product.~~

3.4 Akeso's Approval. Akeso will have the right to reasonably approve or reasonably reject any (a) marketing, sales or other promotional materials, advertisements, press releases and public statements or communications prepared or proposed to be used by or for Distributor in connection with the Product, including any advertising material as may be created by Akeso or on its behalf and made available by Akeso at its sole discretion to Distributor (collectively, "**Marketing Materials**"), and (b) any signs, stationery, business cards or other materials used to identify Distributor as an independent distributor of Akeso of the Product in the Market and Territory (collectively, "**Distributorship Materials**"). Distributor will provide Akeso with pre-production samples of all proposed Marketing Materials and Distributorship Materials at least twenty (20) days prior to Distributor's planned release or dissemination of the Marketing Materials or Distributorship Materials, and Akeso will have a period of twenty (20) days after receipt to approve or reject such items. If Akeso does not give notice to Distributor of its approval or rejection of such items within such twenty (20) day period, then Akeso will be deemed to have approved those Marketing Materials and Distributorship Materials.

3.5 Complaints and Inquiries. Distributor agrees to respond to and deal with any complaints from Distributor's customers or consumers concerning the Product and to take any action reasonably requested by Akeso to resolve such complaints. Akeso agrees to respond to inquiries from Distributor, including inquiries related to quality issues with the Product.

3.6 Restrictions. Distributor agrees not to modify or alter the Product or reverse engineer or attempt to derive the formula of the Product.

3.7 Expenses. Unless expressly agreed in writing, or as otherwise provided in this Agreement, each Party to this Agreement assumes full responsibility for all costs and expenses that it may incur in carrying out its respective obligations under this Agreement, including without limitation, all rent, salaries, commissions, advertising, demonstration, travel and accommodation expenses without the right to reimbursement for any portion thereof from the other Party.

3.8 Development, Marketing and Distribution Costs. Except for the costs in connection with designing and developing the Packaging and Instructions which shall be equally shared by the Parties in accordance with Section 3.2, above, Distributor will be responsible for all development costs in connection with the marketing, sale and distribution of the Product in the Market in the Territory pursuant to this Agreement, including without limitation, all costs in connection with the preparation, creation or dissemination of the Packaging and Instructions, the Marketing Materials and Distributorship Materials.

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3.9 Manufacture or Distribution of Competing Product. Distributor represents and warrants to Akeso that, during the Term, it will not directly or indirectly manufacture, market, distribute or sell in the Market and Territory any Competing Product.

3.10 Prices. The price payable by Distributor for the Product (the “**Product Price**”) is set forth in the attached Exhibit D, which may be updated from time to time by Akeso with ninety (90) days advanced notice to Distributor; provided, however, that Akeso will only increase the Product Price to the extent necessary to secure the same margin that Akeso generates on the Effective Date. Unless indicated otherwise on Exhibit D, all prices on Exhibit D are FOB the locations set forth in Exhibit D or the purchase order (such designated locations may only be changed by a written agreement signed by both Parties). Any special requested packing or handling will be at the sole expense of Distributor. Subject to this Section 3.10 and Exhibit D, the Parties agree that the Product Prices and shipping and handling fees for the Product set forth in Exhibit D are fixed until the end of the Term. In the event this Agreement is renewed or extended upon mutual agreement, Akeso and Distributor agree that the Product Prices and shipping and handling fees for the Product may be adjusted by Akeso.

3.11 Purchase Orders. Akeso will use reasonable efforts to furnish Product ordered by Distributor pursuant to purchaser orders submitted pursuant to this Section 3.11. Distributor will submit purchase orders for the Product to Akeso in writing at least fifty-six (56) days prior to the requested delivery date for Product, which purchase orders will set forth, at a minimum, the following:

- (a) The quantity of the Product;
- (b) Requested delivery date for each Product, which will be more than fifty-six (56) days for the Product after the date on which the purchase order for the Product is received by Akeso;
- (c) Shipping instructions and shipping address (ship to address, freight forwarder, contact information for pick-up of the shipment); and
- (d) Billing address.

3.12 ~~Minimum~~Maximum Purchase Orders. Subject to Section 5.1, below, there shall be no minimum purchase order requirements. ~~In any calendar quarter, Distributor will be entitled to order quantities of the Product equal to one hundred ten percent (110%) of Distributor’s quarterly forecast for each Product for such quarter provided by Distributor to Akeso ninety (90) days prior to the commencement of such calendar quarter pursuant to Section 3.1(b), above; provided, however, that Distributor may be entitled to order additional units of the Product if it obtains the specific written approval of Akeso.~~

3.13 Acceptance or Rejection of Purchase Orders. All purchase orders are subject to acceptance or rejection by Akeso at its offices, and such acceptance by Akeso will not be unreasonably withheld. If Akeso has accepted a purchase order submitted by Distributor pursuant to this Agreement, Akeso will prepare a Pro Forma Invoice (“**PFI**”) with respect to such purchase order and send such PFI by facsimile to Distributor. If Distributor determines that there are any discrepancies between the purchase order and the PFI, Distributor will identify and give notice of such discrepancies in writing to Akeso within ~~ten-five (405)~~ calendar days after receipt of the PFI. If such notice is not received within such ~~ten-five (5)~~ day period, then the purchase order, subject to the terms and conditions in the PFI, will be deemed accepted upon the expiration of such ~~ten-five (5)~~ day period.

3.14 Delivery Terms. The Parties agree that all deliveries for the Product under this Agreement will be FOB the location set forth in Exhibit D or in the purchase order (as the case may be), (which designated location in Exhibit D may only be changed by a written agreement signed by both Parties). Akeso will have no further responsibility for the Product, and all risk of damage to or loss or delay of the Product will pass to

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Distributor, only upon Distributor's receipt of the Product. ~~delivery at the FOB delivery point to a common carrier or otherwise, as the case may be.~~ Akeso will pay all freight and transportation charges in connection with delivery of the Product to Distributor. ~~Distributor will pay all freight and transportation charges,~~ applicable taxes, value-added tax, consumption tax and all other taxes and charges connected to the Product, including as described in Section C of Exhibit A. Akeso reserves all rights permitted by law with respect to Product shipped or delivered, including the rights of rescission, repossession, resale, and stoppage in transit, until the full amount due from Distributor to Akeso with respect of the Product has been paid. Distributor will pay for the Product in accordance with the terms in Section B of Exhibit A.

3.15 Modification of Orders. No purchase order that has been accepted by Akeso may be modified or canceled except upon the written agreement of both Parties. Distributor's purchase orders or change orders that have been accepted by Akeso will be subject to all provisions of this Agreement, whether or not the purchase order or change order so states. In the event of any conflict between the terms of this Agreement and any purchase order issued by Distributor and accepted by Akeso, the terms of this Agreement will prevail.

3.16 Product Changes. Akeso reserves the right, upon sixty (60) days prior written notice and without incurring any liability to Distributor, to alter the Product and to direct Distributor to alter the Packaging and Instructions. Akeso shall communicate to Distributor its marketing and scientific study plans, if any, for the Product at least one (1) time per quarter during the Term.

3.17 Recall. Akeso reserves the right to recall any Product for safety or other reasons at Akeso's discretion. If Akeso exercises its right of recall and recalls any Product, then Distributor will be responsible for the actions required to contact customers or other purchasers or users of the Product that acquired or may have acquired the Product sold by Distributor in order to recall the Product sold by Distributor. Distributor will fully cooperate with Akeso with respect to a recall and will provide to Akeso all Consumer Data and other information reasonably requested by Akeso with respect to a recall, including information about Distributor's actions in contacting purchasers or users of the Product. Akeso agrees that its use of Consumer Data delivered by Distributor pursuant to this Section 3.17 will be limited to activities related to a recall. Distributor and Akeso will each be responsible for its own costs and expenses incurred in conducting such recall, except that if a recall is principally based upon the safety of a Product caused by a feature of the Product for which Akeso was solely responsible and which was solely within Akeso's control, then Akeso will be responsible for any costs and expenses incurred in conducting such recall. Upon each recall by Akeso, Akeso will replace at no charge, freight collect, the recalled Product that have been returned to Akeso by Distributor as a result of the recall, or at Akeso's option, will issue a credit for the actual purchase price (excluding taxes, shipping and other charges) paid by Distributor for the recalled Product that have been returned to Akeso by Distributor as a result of the recall. Except as provided in this Section 3.17, Akeso will have no liability to Distributor for any recall of any Product.

3.18 Potency. Akeso shall supply to Distributor a label-claim potency verification assay of the Product no less than two (2) times per each year of the Term.

4. SHORTAGES.

4.1 Shortages. If the amount of Product received by Distributor for any given purchase order is less than the Product indicated on the purchase orders accepted by Akeso, (such amount is a "**Shortage**") exists with respect to any shipment of Product, then Akeso will promptly ship to Distributor units of Product sufficient to cure such Shortage upon receipt by Akeso of satisfactory evidence of such shortage. Akeso will not be responsible for any Shortage in any shipment unless Akeso has received notice and substantiating evidence from Distributor of such Shortage within two (2) weeks after receipt by Distributor, Distributor's designee or Distributor's customers of such shipment. At the request of Akeso, Distributor will permit Akeso or its agents or consultants or independent third parties to inspect (x) any units in a shipment claimed by Distributor to contain Shortages, and (y) Distributor's books and records, in order to verify Distributor's claims with respect to such shipment. Notwithstanding anything in this Agreement to the contrary, if any of the units of the Product

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are damaged during shipment to or storage by Distributor, Distributor's designee or Distributor's customers, such damaged Product will not be counted as Shortage for purposes of this Section 4.1, and Distributor agrees to make claims against its insurers or other third parties that may be liable for such damaged Product and not to make any claims against Akeso, which will have no liability or obligation to Distributor with respect to such damaged Product.

4.2 No Obligation. Except as provided in Sections 4.1, Akeso will have no obligations with respect to Shortages. All claims against Akeso under Sections 4.1 inure exclusively to Distributor and will be made by Distributor and may not be made by Distributor's customers or any consumers. No express or implied warranties are made by Akeso with respect to the Product.

4.3 Delay. Akeso will not be liable for any loss or damage caused by any delay in delivering any products or services or any other performance under or pursuant to this Agreement. Provided, however, notwithstanding the foregoing, Akeso understands the importance of timely delivery and will discuss ways to expedite the shipment and payment of any additional costs and damages incurred by Distributor in the event of a delay.

4.4 Sole Remedies. The sole and exclusive remedies of Distributor of any kind (including liability for breach of this Agreement or negligence or strict liability or other legal or equitable theories) with respect to the Product or any services provided under this Agreement, including Shortages, will be limited to the remedies set forth in Section 4.1 and any other remedies explicitly provided for in this Agreement. Akeso will not in any event be liable for the cost of procurement of substitute goods.

5. TERM AND TERMINATION.

5.1 Term. This Agreement will not be binding upon the Parties until it has been signed by or on behalf of each Party, in which event it will be effective as of the Effective Date. Unless sooner terminated in accordance with the provisions hereof, the initial term of this Agreement will be for the period commencing on the Effective Date and ending three (3) years thereafter (the "**Initial Term**"). Thereafter, this Agreement shall automatically be extended for an additional three (3) year term (the "**Extended Term**"), provided Distributor purchases a minimum of 360,000 pills (6,000 Units) during the last two (2) quarters of the Initial Term, and continues to purchase a minimum of 360,000 pills (6,000 Units) per quarter during the Extended Term. "**Term**" means the Initial Term and the ~~renewal-Extended term~~ Term, if any.

5.2 Termination. Notwithstanding the provisions of Section 5.1 above, this Agreement may be terminated in accordance with the following provisions:

(a) Akeso may terminate this Agreement by giving written notice of termination to Distributor, which termination will be effective upon such notice, (i) if Distributor materially breaches any of the terms of this Agreement, which if curable, Distributor has failed to cure within the cure period provided in Section 5.2(a)(ii) of this Agreement, (ii) if Distributor fails to make any payment owed hereunder on the date due and such default is not corrected or cured within thirty (30) days after such due date, (iii) if Distributor defaults in the performance of any of its other obligations provided for in this Agreement and fails to cure such default within ~~sixty (60)~~ thirty (30) days after receipt of notice from Akeso of such default, unless a plan for remedying such default has been proposed by Distributor and accepted by Akeso within such period, ~~or (iv) if control of fifty percent (50%) or more of the ownership or voting rights of Distributor or substantially all of Distributor's assets are transferred.~~ Akeso may also terminate this Agreement at any time by giving notice in writing to Distributor or by declaring such termination, effective upon such notice or declaration, upon the occurrence of a Bankruptcy Event by Distributor.

(b) Distributor may terminate this Agreement for any reason by giving sixty (60) day written notice of termination to Akeso. Distributor agrees to refrain from notifying its customers of any such termination for sixty (60) days following notice to Akeso. Distributor may also terminate this Agreement by giving written notice of

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termination to Akeso, which termination will be effective upon such notice, (i) if Akeso materially breaches any of the terms of this Agreement which if curable, Akeso has failed to cure within the cure period provided in Section 5.2(b)(ii) of this Agreement, or (ii) if Akeso defaults in the performance of any of its other material obligations provided for in this Agreement and fails to cure such default within ~~sixty-thirty (6030)~~ days after receipt of notice from Distributor of such default, unless a plan for remedying such default has been proposed by Akeso and accepted by Distributor within such period. Distributor may also terminate this Agreement at any time by giving notice in writing to Akeso or by declaring such termination, effective upon such notice or declaration, upon the occurrence of a Bankruptcy Event by Akeso.

(c) Any Party may terminate this Agreement by giving notice in writing to the other Party, which termination will be effective upon such notice, should an event of Force Majeure occur and continue for more than three (3) months as provided in Section D of Exhibit A.

5.3 Rights and Obligations on Termination. In the event of the expiration or any termination of this Agreement for any reason, the Parties will have the following rights and obligations:

(a) Termination of this Agreement will not release any Party from the obligation to make payment of all amounts then or thereafter due and payable;

(b) Akeso will have the right, at its option, to cancel any accepted purchase orders that provide for delivery after the effective date of termination;

(c) Certain provisions will survive termination of this Agreement pursuant to Exhibit A, Section D.11;

(d) Confidential Information will be returned as provided in Exhibit A, Section A;

(e) Within thirty (30) days of the date of expiration or the effective date of termination, ~~of this Agreement~~, Distributor will provide Akeso with an itemized statement, certified to be accurate by an officer of Distributor, specifying the number of unsold units of the Product that remain in its inventory or under its control at the time of expiration or the effective date of termination. Akeso will be entitled to conduct a physical inspection of Distributor's inventory and work in process during normal business hours in order to ascertain or verify such inventory or statement;

(f) Distributor will cease to market, sell or otherwise distribute the Product; *provided, however*, that except in the case where this Agreement is terminated by Akeso as a result of the failure of Distributor to pay or breach by Distributor of this Agreement or a Bankruptcy Event with respect to Distributor, Distributor may continue to distribute, one hundred twenty (120) days after the later of (i) expiration or termination of this Agreement or (ii) the receipt of the Product from Akeso, the Product that Distributor has already purchased or has in inventory at the time of such expiration or termination, subject to the terms and conditions of this Agreement. Distributor will cease all use of the Licensed Marks immediately upon expiration or termination of this Agreement; ~~as provided in Section 5.6;~~ *provided that* Distributor may continue to sell Product on which the Licensed Marks are used or appear to the extent permitted in this Section 5.3(f).

Distributor agrees:

(f)(1) That it will not dispose of any remaining units of the Product unless and until it has given Akeso a complete and correctly itemized statement of all such unsold Product.

(f)(2) Within ten (10) working days after the end of such one hundred twenty (120) day period, Distributor will provide Akeso with a second itemized statement, certified to be accurate by an

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officer of Distributor, specifying the quantity of unsold units of the Product, on a product-by-product basis, that remain in Distributor's inventory.

(f)(3) Akeso will have an option, exercisable for a period of ten (10) business days after receipt of Distributor's statement pursuant to Section 5.3(f)(2) above to notify Distributor that it desires to purchase from Distributor any or all of such remaining inventory of unsold Product at a mutually agreeable price, but in no instance will the price paid for the unsold Product be greater than the amount originally paid to Akeso by Distributor for such Product.

(f)(4) Any and all Units of the Product that Akeso does not elect to purchase pursuant to Section 5.3(f)(3), above, will be either returned to Akeso or donated to a charitable organization meeting the requirements of Internal Revenue Code 501(c)(3) at the sole discretion of Distributor within five (5) business days of the expiration of Akeso's option period specified in Section 5.3(f)(3). Within five (5) business days after such disposal, Distributor will provide Akeso with an itemized statement, certified to be accurate by an officer of Distributor, indicating the number of Units of the Product that have been disposed (on a title-by-title basis), the name of the charitable organization that received the Product and date of such donation, if applicable, and the disposition of the remains of such disposed materials.

(g) Distributor will cease using all Marketing Materials, Distributorship Materials, Packaging and Instructions and, if requested by Akeso, will return or destroy any or all such Marketing Materials, Distributorship Materials and Packaging and Instructions that remain in Distributor's custody or under its control to Akeso and certify to the return or destruction of all such Marketing Materials, Distributorship Materials and Packaging and Instructions, as provided in Section 7, below.

(h) Upon reasonable request by Akeso, ~~based on a Notice Event (as defined below),~~ Distributor will provide to Akeso any Consumer Data with respect to purchasers of Product from Distributor during the Term, ~~solely for use by Akeso in connection with a recall subsequent to the termination of this Agreement. Akeso acknowledges that Consumer Data is the Confidential Information of Distributor and is governed by the terms set forth in Exhibit A, Section A. "Notice Event" means any recall or safety-related event in which Akeso has certified in writing to Distributor that Akeso will be sending a notice to a class of consumers that includes Distributor's customers for purposes of informing such consumers about a product safety or recall matter and for no other purpose whatsoever. As part of such certification, Akeso will provide Distributor with a copy of any such notice and the planned date of circulation. Akeso's certification to Distributor will specifically identify the class of consumers and the reason for the notification.~~

5.4 Reversion of Rights. If this Agreement expires or is terminated by either Party the rights herein granted to Distributor will immediately revert to Akeso, and Distributor will cease and desist from any further use of the Akeso Intellectual Property Rights, and Distributor will have no further right to continue the marketing, sale, or distribution by or for Distributor of any Product, nor to continue to use the Licensed ~~Trademarks~~Marks, unless the prior written consent of Akeso has been obtained.

5.5 No Compensation and No Obligation to Renew. ~~If any Party terminates this Agreement for any reason in accordance with the terms hereof, the Parties hereby agree that, subject to the provisions of Section 5.3 hereof and without prejudice to any other remedies that any Party may have with respect of any breach of this Agreement, neither Party will be entitled to any compensation or like payment from the other as a result of such termination. In particular, each Party hereby unconditionally and irrevocably waives any right to or claim for termination indemnity or other compensation to which such Party may otherwise be entitled under applicable law in connection with the expiration or termination of this Agreement. The Parties further agree that (except as set forth in Section 5.1) neither Party will be under any obligation to renew or extend this Agreement after the expiration of the Term, notwithstanding any actions taken by any of the Parties prior to the expiration of the Term of this Agreement. Upon expiration or termination of this Agreement, neither Party will be liable to the other for any damages (whether direct, consequential, or incidental, and including, any expenditures, loss of~~

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~~profits, or prospective profits) sustained or arising out of or alleged to have been sustained or to have arisen out of such expiration or the termination of this Agreement. Notwithstanding the foregoing, neither Party will be excused from its previous breach of any of the provisions of this Agreement or from any obligations surviving the termination or expiration of this Agreement, and full legal and equitable remedies will remain available for any breach or threatened breach of this Agreement or any obligations arising therefrom. The expiration or termination of this Agreement in accordance with the provisions of this Section 5 will be without prejudice to any rights or remedies that the terminating Party may otherwise have against the other Party.~~

6. TRADEMARKS AND BRANDING.

6.1 Use of the Licensed Marks by Distributor. Subject to Akeso's approval rights under Section 3.4, above, Akeso hereby grants to Distributor limited use of the Licensed Marks identified in Exhibit E on the Packaging and Instructions, the Marketing Materials and the Distributorship Materials. The Product sold to Distributor by Akeso under this Agreement will have such Licensed Marks as Akeso may determine. Distributor may not use the Licensed Marks except as specifically provided in this Agreement or as agreed in writing by Akeso and Distributor.

6.2 Monitoring and Rules regarding the Licensed Marks. During the Term, Distributor will provide Akeso with samples of the Packaging and Instructions, the Marketing Materials and the Distributorship Materials bearing any Licensed Marks for approval. Distributor will acquire no right, title or interest in the Licensed Marks or Akeso's name, except the right to use as provided in Section 6.1, above. All use of the Licensed Marks or Akeso name by Distributor will inure to the benefit of Akeso. Distributor agrees (a) not to contest at any time, whether during the Term of this Agreement or thereafter, the rights of Akeso in or to, or the validity of, the Licensed Marks or the Akeso name, (b) not to use or register or apply to register or cause to be registered with any trademark or domain name registration organization the Licensed Marks or Akeso's name or any trademark, trade name, service mark, word, phrase or symbol or domain name that is identical or similar to the Licensed Marks or Akeso's name or that contains part of the Licensed Marks or the Akeso name, whether during the Term of this Agreement or thereafter, or (c) to promptly assign to Akeso any registrations or applications for registrations with any trademark or domain name registration organization of the Licensed Marks or the Akeso name or any trademark, trade name, service mark, word, phrase or symbol or domain name which is identical or similar to the Licensed Marks or the Akeso name or which contains part of the Licensed Marks or the Akeso name, whether during the Term of this Agreement or thereafter. Distributor acknowledges Akeso's ownership of the Licensed Marks and Akeso's name and agrees that it will do nothing inconsistent with such ownership.

6.3 Markings of Akeso's Names and Marks. Distributor may not, without the prior written consent of Akeso, remove or alter any trade names, trademarks, notices, patent numbers, serial numbers, labels, tags or other identifying marks, symbols, or legends affixed to any Product or to the packages in which the Product are placed.

6.4 Registration and Enforcement. Distributor will cooperate with Akeso to the extent necessary to protect and maintain the Licensed Marks and the Akeso name in the Territory, including, assist in the enforcement of or defense of Akeso's rights in and to the Licensed Marks and the Akeso name. In any action, proceeding or lawsuit to enforce, defend or maintain the Licensed Marks or the Akeso name, Akeso will have the exclusive right, at its discretion, to control all proceedings, select counsel and to control the prosecution or defense of the settlement thereof, all at Akeso's expense. Distributor will promptly notify Akeso of any use by any third party of the Licensed Marks or Akeso's name on any product or service, or any use by such third parties of similar marks, in the Territory, which may constitute an infringement of the Licensed Marks or the Akeso name. All damages that may be awarded or agreed upon in settlement of such action will accrue to Akeso. In the event that Akeso or Distributor receives a claim that use by Distributor of the Licensed Marks or the Akeso name infringes or violates the trademark or other proprietary rights of such claimant, each Party will promptly notify the other Party, and Distributor and Akeso agree to cooperate with each other on actions to be

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taken with respect to such claims, including, modifying the Licensed Marks or cease selling or withdrawing or recalling the Product on which the Licensed Marks appears or ceasing to use the Licensed Marks or the Akeso name; *provided that* Akeso will have the exclusive right to make the final decision with regard to any actions to be taken with respect to such claims.

6.5 Termination of Use of Akeso's Names and Marks. Except to the extent permitted in Section 5.3(f), upon expiration or termination of this Agreement, Distributor will cease all use of the Licensed Marks and the Akeso name and will not adopt or use any trademark, trade name, service mark, logo, words, phrases or symbols which are identical to or similar to the Licensed Marks or the Akeso name or which contain part of the Licensed Marks or the Akeso name.

7. INTELLECTUAL PROPERTY.

7.1 Ownership Rights. Distributor acknowledges and agrees that all proprietary and contractual rights with respect to the Akeso Intellectual Property Rights, including, without limitation, the Product, the Licensed Marks, and the Packaging and Instructions (exclusive of Distributor Marks) are and will be the exclusive property of Akeso. Nothing in this Agreement gives Distributor any rights, title or interest in or to the Akeso Intellectual Property Rights, other than the right to market and distribute in the Market in the Territory the Product during the Term. Distributor agrees that it may not: (a) use the Akeso Intellectual Property Rights with respect to any product, article or service other than the Product, the Packaging and Instructions, the Marketing Materials and Distributorship Materials expressly authorized under this Agreement; (b) grant or purport to grant to any third party any right to use the Akeso Intellectual Property Rights, without the prior written consent of a duly authorized officer of Akeso; (c) do or cause to be done any act or thing contesting or in any way impairing or tending to impair any of Akeso's rights, title, or interest in or to the Akeso Intellectual Property Rights; or (e) obtain any rights, title or interest in or to the Akeso Intellectual Property Rights. To the extent any such rights, title or interest in or to the Akeso Intellectual Property Rights are acquired by Distributor, Distributor agrees to assign such rights to Akeso without any consideration due to Distributor other than that provided by Akeso under this Agreement. Upon the expiration or earlier termination of this Agreement for any reason, Distributor will thereupon immediately cease and desist from any further use of the Akeso Intellectual Property Rights licensed under this Agreement.

7.2 Other Materials.

(a) During the Term, Distributor may use the Packaging and Instructions solely for purposes of selling or promoting the sale of the Product in the Market and Territory. Upon the expiration or termination of this Agreement (i) Distributor will promptly deliver to Akeso any and all Packaging and Instructions that remain in Distributor's custody or under its control, provided that Distributor may retain one (1) set of Packaging and Instructions for archival purposes only, (ii) Distributor will cease any and all use of the Packaging and Instructions.

(b) Distributor will own all Marketing Materials and all Distributorship Materials; *provided, however*, that (i) Akeso will own all trademarks, trade names, and trade dress used in connection with the Product in the Marketing Materials and Distributorship Materials; and (ii) upon the termination or expiration of this Agreement, Distributor will cease using all Marketing Materials and Distributorship Materials, and, if requested by Akeso, will destroy all Marketing Materials and Distributorship Materials that remain in Distributor's custody or under its control and will certify to Akeso as to the destruction of all such Marketing Materials and Distributorship Materials, provided that Distributor may retain one (1) set of Marketing Materials and Distributorship Materials for archival purposes only.

8. REPRESENTATIONS AND WARRANTIES AND ADDITIONAL COVENANTS.

8.1 Akeso. Akeso represents and warrants solely for the benefit of Distributor that as of the Effective Date: (a) Akeso has the right, power and authority to enter into this Agreement; (b) Akeso has the

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ability to fully perform its obligations hereunder; and (c) the execution of this Agreement by Akeso does not violate any separate agreement existing between Akeso and any other person or entity.

8.2 Disclaimer. AKESO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A GENERAL OR PARTICULAR PURPOSE OR FREEDOM FROM CLAIMS OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE PRODUCT, WHICH IS PROVIDED "AS IS" (EXCEPT AS EXPRESSLY WARRANTED BY AKESO HEREIN OR IN AN EXHIBIT HERETO). AKESO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES UNDER THIS AGREEMENT WITH RESPECT TO THE PRODUCT AS BETWEEN AKESO AND DISTRIBUTOR, AND AS BETWEEN AKESO AND ANY THIRD PARTY PURCHASERS OF ANY PRODUCT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR ANY GENERAL OR PARTICULAR PURPOSE OR FREEDOM FROM CLAIMS OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE.

8.3 Distributor. Distributor represents and warrants that: (a) Distributor has the right, power and authority to enter into this Agreement; (b) Distributor has the ability to fully perform its obligations hereunder; (c) the execution of this Agreement by Distributor does not violate any separate agreement existing between Distributor and any other person or entity or any order or judgment binding upon either of them; and (d) Distributor's marketing and selling of the Product shall comply with applicable national, state and local laws, including any and all markings in the Packaging and Instructions. Distributor will not make any representation or give any warranty to any person or entity expressly or implied on behalf of Akeso or its subsidiaries, affiliates or agents, to the effect that Distributor is connected in any way with Akeso or its subsidiaries, affiliates or agents (other than that the Product has been marketed or distributed under license from Akeso). Distributor agrees that the Product will be promoted, advertised, merchandised, marketed, sold, and distributed in accordance with any and all applicable statutes, laws, ordinances, and regulations.

9. INDEMNIFICATION.

9.1 Akeso Indemnification Obligations. Subject to Section 9.3, below, Akeso will indemnify, defend, and hold Distributor harmless from and against any and all actual losses, liabilities, costs, damages, fees and expenses, including reasonable attorneys' fees and court costs, that Distributor incurs as a result of third party claims to the extent such claims are based upon the breach or alleged breach of any representations and warranties and covenants by Akeso or the infringement by the Product or Akeso Intellectual Property Rights of any patent, copyright or trademark rights. In the event of any claim for indemnification pursuant to the foregoing indemnity or if Akeso believes that any Product is likely to become subject to such a claim, Akeso may, at its sole option and expense: (A) modify any of the Product to render it non-infringing or replace any of the Product with a product that is non-infringing and functionally equivalent; (B) obtain a license for Distributor to continue to use the Product under the terms of this Agreement; or (C) terminate this Agreement, accept the return of any units of the Product already purchased by Distributor and return a pro rata portion of any amounts Distributor has paid Akeso under this Agreement for Distributor's existing unsold inventory of such Product. The foregoing will be Akeso's sole liability for infringement of intellectual property rights relating to the Product.

9.2 Distributor Indemnification Obligations. Subject to Section 9.3, below, Distributor will indemnify, defend, and hold Akeso harmless from and against any and all actual losses, liabilities, costs, damages, fees and expenses, including reasonable attorneys' fees and court costs, that Akeso incurs as a result of third party claims to the extent such claims are based upon (i) the breach or alleged breach of any representations and warranties and covenants, (ii) any representations or warranties made by Distributor with respect to any Product beyond those authorized by Akeso, if any, and (iii) the infringement of any third party's patent, copyright or trademark rights by any of the Distributor Marks, or by any materials or goods owned, created or licensed by Distributor (from a party other than Akeso) and used in connection with the performance of Distributor's duties under this Agreement. In the event of any claim for indemnification pursuant to the foregoing indemnity or if Distributor believes that any Product is likely to become subject to such a claim,

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Distributor may, at its sole option and expense: (A) modify the intellectual property item to render it non-infringing or replace any of the intellectual property items with an item that is non-infringing and functionally equivalent; (B) obtain a license for Akeso to continue to use the intellectual property item under the terms of this Agreement; or (C) terminate this Agreement. The foregoing will be Distributor's sole liability for infringement of intellectual property rights relating to any intellectual property items..

9.3 Mechanics of Indemnification. Each Party's obligation to indemnify the other pursuant to this Section 9 is predicated upon the indemnified Party's (a) giving the indemnifying Party written notice of any claims giving rise to the indemnification obligations promptly after the indemnified Party becomes aware of such claims; (b) allowing the indemnifying Party to control any defense and related settlement negotiations regarding such claim, and (c) fully cooperating, at the indemnifying Party's expense, in any defense or settlement of such claim. The indemnified Party may participate in the defense and settlement of any indemnifiable claim with the counsel of its choice at its expense.

~~**11. LIMITATIONS ON LIABILITY.** Neither Party will be liable to the other Party for any indirect, incidental, special, or consequential damages arising out of this Agreement, whether based on contract, tort or otherwise, even if such Party has been advised of, knew, or should have known of, the possibility of such damages, and notwithstanding the failure of essential purpose of any remedy. The limitations on liability set forth in this section will not apply to any liability incurred by either Distributor or Akeso under Section 9 of this Agreement.~~

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~~**11.10. OTHER TERMS AND CONDITIONS.** Akeso and Distributor agree to the other terms and conditions set forth in the attached Exhibits A, B, C, D, E and F, and agree that such terms and conditions are incorporated into this Agreement. Further, this Agreement shall be effective as of the Effective Date and only upon execution and delivery of that certain Trademark Purchase Agreement between the Parties of even date herewith.~~

~~**13. CONDITION.** This Agreement shall be effective as of the Effective Date only upon execution and delivery of that certain Trademark Purchase Agreement between the Parties of even date herewith.~~

~~**13.11. INSURANCE.** Distributor and Akeso shall, at its expense their respective costs, obtain and maintain as of the Effective Date and throughout the Term product liability insurance, including without limitation, public liability insurance for personal injury and property damage, with respect to the Product in an amount not less than \$2,000,000. Distributor and Akeso shall be added as an additional insureds on the other's policy, entitled entitling each to, among other things, all notices issued thereunder. Distributor and Akeso shall provide each other Akeso with a copy of certificates or other evidence satisfactory to Akeso each of compliance with the foregoing insurance provisions.~~

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IN WITNESS WHEREOF, the Parties have caused this Distribution Agreement to be executed as of the Effective Date.

AKESO HEALTH SCIENCES, LLC

QUANTUM, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notices:

Address for Notices:

Fax: _____

Fax: _____

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SIGNATURE PAGE FOR DISTRIBUTION AGREEMENT

EXHIBIT LIST

Exhibit AOther Terms and Conditions

Exhibit BDefinitions

Exhibit CDefinitions of “Market” and “Territory”

Exhibit DProduct and FOB Location

Exhibit ELicensed Marks

Exhibit FDistributor Marks

Exhibit A**OTHER TERMS AND CONDITIONS**

The terms and conditions set forth in this Exhibit A are incorporated into the Agreement:

A. CONFIDENTIALITY.

A.1. General. The Parties mutually acknowledge and agree that certain information that one Party (the “**Receiving Party**”) will receive from the other Party (the “**Disclosing Party**”) will be deemed to be confidential information and subject to restrictions on disclosure and use as set forth below. As used in this Agreement, the term “**Confidential Information**” means Akeso Confidential Information or Distributor Confidential Information, as the case may be.

A.2. Obligations. Distributor and Akeso, each as a Receiving Party, respectively, agrees that it will not disclose and will maintain the confidentiality of the Joint Confidential Information and Confidential Information of the Disclosing Party, and it will safeguard the confidentiality of such information with the same degree of care used to protect its own information of a like nature or in accordance with the provisions of any separate non-disclosure agreement applicable to such information. Each Party further agrees that it will not use for its own account except for the performance of this Agreement or for the account of any third party, nor disclose or otherwise disseminate any Confidential Information of the Disclosing Party, unless the prior written consent of the Disclosing Party has been obtained. Akeso’s disclosure to its parent or subsidiary companies will not be considered a breach of this Section A.2. The obligations set forth in this Section A will not be applicable to any information that: (a) is or becomes generally known or part of the public domain through no default hereunder on the part of the Receiving Party; (b) is known to the Receiving Party prior to the disclosure thereof by the Disclosing Party, as established by documentary evidence; (c) is lawfully received by the Receiving Party from a third party who provided such information without breach of any separate confidentiality obligation owed by such third party; (d) is disclosed by the Disclosing Party to unaffiliated third parties without restriction on subsequent disclosure; or (e) is information the Receiving Party reasonably believes is required to be disclosed in the context of any administrative, regulatory or judicial proceeding or filing, but only to the extent required by any such action and only after giving the Disclosing Party not less than ten (10) business days prior written notice of any such

required disclosure; and *provided that* the Party required to make such disclosure will use its reasonable best efforts to obtain an appropriate protective order or confidential treatment regarding the information to be disclosed in any such context.

A.3. Limitations. Each Party, as Receiving Party, will use its reasonable best efforts by contract, instruction or otherwise to ensure that its officers, directors, employees, agents and contractors comply with such Party’s obligations under this Section A, and to ensure that no Confidential Information of the Disclosing Party will be disclosed or made available to any such officers, directors, employees, agents or contractors of the Receiving Party unless such persons or third parties have a need to know such information for purposes of the performance of this Agreement.

A.4. Trade Secrets. Each Party, as Receiving Party, acknowledges that the Disclosing Party considers its Confidential Information to contain trade secrets of the Disclosing Party and that any unauthorized copying, use, or disclosure of such information would cause the Disclosing Party immediate, irreparable and irremediable harm for which its remedies at law will be inadequate. Accordingly, each Party acknowledges and agrees that the Disclosing Party will be entitled, in addition to any other remedies available to it at law or in equity, to the issuance without bond of ex parte injunctive relief enjoining any breach or threatened breach of the Receiving Party’s obligations hereunder with respect to the Confidential Information of the Disclosing Party, and such further relief as any court of competent jurisdiction may deem just and proper.

A.5. Return of Materials. Upon the expiration of this Agreement or its earlier termination, or upon the request of the Disclosing Party at any time, each Party, as a Receiving Party, will promptly return to the Disclosing Party any and all documents and related materials containing Confidential Information of Disclosing Party and which is in the Receiving Party’s custody or under its control, or, if requested by the Disclosing Party, will destroy all such trade secret or confidential information and certify to the destruction of all such documents and related materials.

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B. PAYMENTS AND PRICES.

B.1. Payments. All payments by Distributor for the purchase of the Product under this Agreement will be paid in full thirty (30) days following Distributor's receipt of the Product, as follows (i) fifty percent (50%) paid upon submission of any purchase order, and (ii) the remaining fifty percent (50%) upon delivery of such order. All payments hereunder will be made in United States dollars.

B.2. Late Payment. Distributor acknowledges and agrees that all sums owed or otherwise payable to Akeso hereunder will bear interest at the rate of one and one-half percent (1-1/2%) per month, or such lower rate as may be the maximum rate permitted under applicable law, from the date upon which payment of the same will first become due up to and including the date of payment thereof whether before or after judgment, and that Distributor will be additionally liable for all costs and expenses of collection, including reasonable fees for attorneys and court costs; provided, however such late payment charges and collection costs shall not apply to purchase order in which a letter of credit is provided. Notwithstanding the foregoing, such specified rate of interest will not excuse or be construed as a waiver of Distributor's obligation to timely provide any and all payments owed to Akeso hereunder.

B.3. Records and Audit. No more than one (1) time each calendar year, Akeso may have a certified public accountant ("CPA"), reasonably acceptable to Distributor, audit such books and records of account of Distributor, to confirm the accuracy and completeness of the shortages reports submitted hereunder. Akeso acknowledges and agrees that: (a) such audit may be conducted by Akeso no more than one (1) time in any each calendar year during Distributor's normal business hours and in a manner that does not disrupt Distributor's normal business operations; (b) the CPA may only inspect and audit the previously unaudited books and records for the period covered by the shortages and non-conforming product reports in question; (c) Distributor may require that the CPA execute Distributor's non-disclosure agreement and not report to Akeso any information other than whether and to what extent the shortages and non-conforming product reports issued hereunder by Distributor are accurate. Except as set forth below, Akeso shall bear all costs and expenses incurred in connection with any audit under this paragraph. In addition to paying Akeso any such amounts as are identified by any audit, if an audit reveals that Distributor has over calculated the

amounts by five percent (5.0%) or more with respect to any calendar quarter, Distributor will reimburse Akeso for the reasonable costs of such audit (not to exceed \$10,000), provided that Akeso submit documentation reasonably acceptable to Distributor verifying the costs of such audit.

C. TAXES.

C.1. Taxes. Except as otherwise agreed, Distributor will be solely responsible for and will pay, or reimburse Akeso for, all taxes, duties, import deposits, sales taxes, value added taxes, assessments and other governmental charges, however designated, which are now or hereafter imposed under or by any governmental authority or agency, that are (a) associated with the payment of any amounts by Distributor to Akeso pursuant to this Agreement (except for income taxes based on the net profits of Akeso), or (b) based on the Product or their sale or use to or in the Territory, or (c) relate to the import of the Product into the Territory, if applicable.

C.2. Payments. In the event any payments made or to be made by Distributor to Akeso pursuant to this Agreement become subject to taxes, duties, import deposits, value added taxes, assessments, governmental charges, or fees of whatever kind or nature, said payments will be increased to such an extent as to allow Akeso to receive the full amounts due under this Agreement.

D. MISCELLANEOUS.

D.1. Force Majeure. Upon giving notice to the other Party, a Party affected by an event of Force Majeure will be released without any liability on its part from the performance of its obligations under this Agreement (except for the obligation to pay any amounts due and owing hereunder), but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of an event of Force Majeure, the other Party may suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

D.2. Publicity. This Agreement is confidential and no Party will engage in any publicity of any nature or otherwise disclose the terms of this Agreement without the other Party's prior written approval, which approval will not be unreasonably withheld, except that disclosure of the terms and

conditions of this Agreement may be made to the extent such disclosure is required to comply with governmental laws, rules or regulations or stock market rules or regulations and Akeso may disclose the terms and conditions of this Agreement to financial advisers and potential investors in Akeso or any of its affiliates.

D.3. Notices. All notices or other communications required or desired to be sent to any of the Parties will be in writing and will be sent by registered or certified mail, postage prepaid, return receipt requested, or sent by recognized international courier service (e.g., Federal Express, DHL, etc.) with charges prepaid, or by facsimile which is subject to confirmation by letter. The address for all notices or other communications required to be sent to Akeso or Distributor will be the mailing address stated on the signature page to this Agreement, or such other address as may be provided from one Party to the other on at least ten (10) days prior written notice. Any such notice will be effective upon the date of receipt.

D.4. Independent Contractor. Akeso and Distributor are each acting as an independent contractor in performing its respective obligations under this Agreement and neither Akeso nor Distributor is the legal representative, agent, joint venturer, partner, or employee of the other for any purpose whatsoever. Neither Akeso nor Distributor will have any right or authority to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other Party in any respect.

D.5. Assignment. Akeso has entered into this Agreement based upon the particular capabilities and experience of Distributor. Accordingly, Distributor may not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, unless first obtaining the written consent of an authorized officer of Akeso, except that Akeso agrees ~~not to unreasonably withhold such to~~ consent to any transfer in connection with Distributor's sale of all or substantially all of its assets or the sale of a controlling interest in the common stock of Distributor to a third party. Any attempted or purported assignment, delegation or other transfer without the required consent of Akeso will be void and a material breach of this Agreement. Akeso may not assign or transfer this Agreement without first obtaining the written consent of an authorized officer of Distributor. Any attempted or purported

assignment, delegation or other transfer without the required consent of Distributor will be void and a material breach of this Agreement. Subject to the foregoing, this Agreement will inure to the benefit of the Parties and their respective successors and permitted assigns. Akeso may freely subcontract or delegate its rights or obligations hereunder.

D.6. Compliance with Applicable Laws. The Parties will at all times comply with all applicable statutes, laws, ordinances, regulations and orders of their respective countries, and with all conventions and treaties to which their countries are a party and that relate to or affect this Agreement or the Parties' rights or obligations hereunder. Each Party, at its own expense, will obtain any license, permit or approval required with respect to the exercise of its rights or performance of its obligations hereunder, and will declare, record or take such steps to render this Agreement binding, including the recording of this Agreement with any appropriate governmental authorities (if required).

D.7. Governing Law, Mediation, Arbitration and Injunctive Relief.

(a) Governing Law. This Agreement will be governed as to all matters, including validity, construction and performance, by and under the laws of the State of California and the United States of America, without giving effect to conflicts of law principles thereof.

(b) Mediation and Arbitration. The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and

inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The Parties agree that the final and binding arbitration will be conducted before a single arbitrator ("**Arbitrator**") selected from and administered by JAMS, ("**Administrator**") in accordance with its then existing arbitration rules or procedures regarding commercial or business disputes. The arbitration hearing shall be held in Los Angeles, California. The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The Arbitrator shall be authorized to award compensatory damages, but shall NOT be authorized (i) to award non-economic damages, such as for emotional distress, pain and suffering, or loss of consortium, (ii) to award punitive damages, or (iii) to reform, modify or materially change this Agreement or any other agreements contemplated hereunder, *provided, however*, that the damage limitations described in parts (i) and (ii) of this sentence will not apply if such damages are statutorily imposed. The Arbitrator also shall be authorized to grant any temporary, preliminary or permanent equitable remedy or relief he or she deems just and equitable and within the scope of this Agreement, including, without limitation, an injunction or order for specific performance. By agreeing to this binding arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a Claim between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this Provision, the right to a jury trial, certain rights of appeal, and a right to invoke formal rules of procedure and evidence.

(c) Injunctive Relief. Notwithstanding the preceding Section D.7(b), either Party may, at its sole discretion, seek any temporary, preliminary or permanent equitable remedy or relief, including without limitation, an injunction or order for specific performance in any State or federal court located in Los Angeles County, California, which counties will have non-exclusive jurisdiction for such actions, and the Parties hereby submit to such jurisdiction, until an arbitration proceeding can be completed to determine a final resolution of the dispute. Without limiting any remedies available to either Party, each Party acknowledges that money damages may not be an adequate remedy for breach of this Agreement and agrees that the other Party shall be entitled to specific performance or injunctive relief (without showing irreparable harm) to enforce or prevent any violation of those provisions of this Agreement.

D.8. Legal Costs and Expenses. Each Party shall bear its own attorney's fees, costs, and disbursements arising out of any arbitration, and shall pay an equal share of the fees and costs of the Administrator and the Arbitrator; *provided, however*, the Arbitrator shall determine whether a Party is the prevailing party, and if so, to award to that prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the Administrator and the Arbitrator. Absent the filing of an application to correct or vacate the arbitration award under California Code of Civil Procedure sections 1285 through 1288.8, each Party shall fully perform and satisfy the arbitration award within forty-five (45) days of the service of the award.

D.9. Remedies. Except as expressly set forth in this Agreement as an exclusive remedy or otherwise to the contrary, the election by a Party of any remedies provided for in this Agreement will not be exclusive of any remedies otherwise available hereunder or at law or in equity, and all such remedies will be cumulative.

D.10. Severability. If any provision of this Agreement (or portion thereof) is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, such provision (or part thereof) will be enforced to the extent possible consistent with the stated intention of the Parties, or, if incapable of such enforcement, will be deemed to be deleted from this Agreement, while the remainder

of this Agreement will continue in full force and remain in effect according to its stated terms and conditions.

D.11. Survival. The following provisions of this Agreement will survive the expiration or earlier termination of this Agreement: Sections 3.17, 4, 5.3, 5.4, ~~5.5, 6.36~~, 7, 8, 9, 10 and 11 of the main body of the Agreement; and Sections A, B, C, ~~and D~~, E and F of this Exhibit A together with any other obligations under this Agreement which are intended to survive termination or expiration of this Agreement.

D.12. Waiver. No failure or delay by any Party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power, or remedy. No waiver of any provision of this Agreement will be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver by any Party of any provision of this Agreement will not be construed as a waiver of any other provision of this Agreement, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance.

D.13. Construction, Counterparts and Language. The headings and subheadings used in this Agreement are intended for convenience of reference only and will not be considered part of this

Agreement. This Agreement will be fairly interpreted in accordance with its terms and without any strict construction in favor of or against any of the Parties. This Agreement may be executed in one or more counterparts in the English language, and each such counterpart will be deemed an original hereof. In case of any conflict between the English version and any translated version of this Agreement, the English version will govern. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

D.14. Entire Agreement; Amendments. Subject to that certain Trademark Purchase Agreement between the Parties of even date herewith, this Agreement, including all exhibits attached hereto, constitutes the entire agreement between Akeso and Distributor with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, proposals, understandings and communications between Akeso and Distributor, whether oral or written with respect to the subject matter hereof, and supersedes all prior agreements, proposals, understandings of Distributor with respect to the Product, including without limitation the Letter Agreement dated February 18, 2002 by and between PR-Osteo, LLC and Distributor. This Agreement may not be amended, in whole or in part, except in a writing signed by each of the Parties.

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Exhibit B
DEFINITIONS

The definitions set forth in this Exhibit B will apply to the capitalized terms used in the Agreement:

“Akeso Confidential Information” means (i) the fact that Akeso is developing or intends to develop any particular hardware, software or other product disclosed by Akeso to Distributor, (ii) any non-public information regarding the Product provided by Akeso to Distributor, (iii) any non-public information concerning the business or finances or other products of Akeso, (iv) any other information provided by Akeso which is designated in writing by Akeso prior to disclosure as being, or should reasonably be understood to be, proprietary to Akeso, or (v) the terms and conditions of this Agreement and any amendments, renewals, or supplements hereto and any other information that the Parties hereafter mutually agree in writing to treat as “joint” Confidential Information.

“Akeso Intellectual Property Rights” means the Licensed Marks and all trade secrets, patents, technology, copyrights, copyrightable works, designs, mask works, drawings, trademarks, know how, processes and other proprietary rights, whether registered or unregistered, and all applications and registrations therefor, owned or controlled by Akeso, which pertain to the Product.

“Bankruptcy Event” means the occurrence of any of the following events or circumstances by a person or entity: (a) a person or entity is unable to pay its debts when due; (b) a person or entity makes an assignment for the benefit of any of its creditors; (c) a person or entity files or has filed against it any petition under the bankruptcy or insolvency laws of any jurisdiction; (d) a person or entity has or suffers a receiver or trustee to be appointed for its business or property; or (e) a person or entity is adjudicated to be bankrupt or insolvent.

“Competing Product” means a consumer product designed to achieve the benefits of the Product.

“Confidential Information” has the meaning set forth in Exhibit A, Section A.1.

“Consumer Data” means information submitted by, or otherwise collected by Distributor about, consumers and end-users of the Product, including their names, addresses, telephone numbers, warranty card information and registrations.

“Disclosing Party” has the meaning set forth in Exhibit A, Section A.1.

“Distributor Confidential Information” means (i) the fact that Distributor is developing or intends to develop any particular hardware, software or other product disclosed by Distributor to Akeso, (ii) any non-public information concerning the business or finances or other products of Distributor, (iii) any other information provided by Distributor which is designated in writing by Distributor prior to disclosure as being, or should reasonably be understood to be, proprietary to Distributor, or (iv) the terms and conditions of this Agreement and any amendments, renewals, or supplements thereto and any other information that the Parties hereafter mutually agree in writing to treat as “joint” Confidential Information.

“Distributor Mark” means those registered or unregistered trademarks owned by Distributor and used in connection with the Product including the trademarks set forth on Exhibit F to the Agreement.

“Distributorship Materials” has the meaning set forth in Section 3.4.

“Effective Date” has the meaning set forth in opening paragraph of this Agreement.

“Exclusive Market” has the meaning set forth in Exhibit C.

“Force Majeure” means any event or condition not reasonably within the control of any Party, which prevents in whole or in material part the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following will constitute events or conditions of Force Majeure: acts of State or governmental action, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged

shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion. It is in particular expressly agreed that any refusal or failure of any governmental authority to grant any export license legally required for the fulfillment by Akeso of its obligations hereunder will constitute an event of Force Majeure.

“**Joint Confidential Information**” means: (i) the terms and conditions of this Agreement and any amendments, renewals, or supplements hereto; and (ii) any other information that the Parties hereafter mutually agree in writing to treat as Joint Confidential Information.

“**Licensed Marks**” means those registered or unregistered trademarks owned by Akeso and used in connection with the Product including the trademarks set forth on Exhibit E to the Agreement, as such exhibit may be amended by Akeso from time to time during the Term.

“**Market**” means the market or markets in the Territory in which Distributor may market and sell the Product, which market or markets are set forth in Exhibit C to the Agreement.

“**Marketing Materials**” has the meaning set forth in Section 3.4.

“**Non-Exclusive Market**” has the meaning set forth in Exhibit C to the Agreement.

“**Packaging and Instructions**” has the meaning set forth in Section 3.2.

“**PFI**” has the meaning set forth in Section 3.13.

“**Product Price**” has the meaning set forth in Section 3.10.

“**Product**” means Akeso’s migraine formula for use in natural product class of trade commonly known as MigreLief.

“**Receiving Party**” has the meaning set forth in Exhibit A, Section A.1.

“**Shortage**” has the meaning set forth in Section 4.2.

“**Term**” has the meaning set forth in Section 5.1; *provided that* the Term will end on earlier termination of the Agreement pursuant to the provisions herein.

“**Territory**” means the country or countries set forth in Exhibit C to the Agreement.

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Exhibit C

DEFINITIONS OF MARKET AND TERRITORY

“Market” means the Exclusive Market and the Non-Exclusive Market. Market does not include, among other ~~areas~~**markets**, stores that mainly sell vitamins, minerals and supplements (e.g., GNC, Vitamin Shoppe, Vitamin World, Great Earth, Seattle Super Supplements, etc.).

“Exclusive Market” means health food, natural product and vitamin/mineral/supplement stores that sell dietary supplements, including, without limitation, health supermarkets and grocery stores, but excluding, without limitation, pharmacies, or any store which includes a pharmacy (except for Pharmaca), the Vitamin Shoppe, Pharmaca, GNC, Great Earth, Vitamin World and Seattle Super Supplements, and all other markets and channels of distribution.

“Non-Exclusive Market” means direct sales to consumers over the Internet through Distributor’s name or through websites of retailers in the Exclusive Market one domain name operated or caused to be operated by Distributor.

“Territory” means the United States of America.

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Exhibit D**PRODUCTS AND FOB LOCATION**

1. For Product: \$3.80 per 60 pills ("Unit") ~~plus shipping and handling fee~~. Minimum order quantity for Product is 5,000 Units.

~~2. Shipping and handling charge for Product ("Shipping and Handling Charge"):~~

~~\$8.00/unit to ship 1 to 100 units to a common location~~

~~\$7.00/unit to ship 101 to 500 units to a common location~~

~~\$6.00/unit to ship 501 to 1,000 units to a common location~~

~~\$5.00/unit to ship 1,001 units and more to a common location~~

~~The above charges are for shipment within the 48 contiguous United States and are based on Akese's use of a shipping container that is _____ inches by _____ inches by _____ inches. Any material change in the size of the shipping container by Distributor will result in a recalculation of the shipping and handling charges set forth in this Exhibit D.~~

~~Shipping and handling charge for shipment of Product to Alaska, Hawaii, _____ and _____ available upon Distributor's request.~~

~~32. FOB Location: _____, dDelivered~~ to Distributor's designated distribution center or warehouse.

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Exhibit E

LICENSED MARKS

1. Akeso logo,
2. MigreLief trademark
3. Puracol

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Exhibit F

DISTRIBUTOR MARKS

1. Quantum

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