



Earlens Sales Agreement Terms and Conditions

I. DEFINITIONS

- a. **“Authorized User”** means a licensed professional with the following qualifications: the training and qualifications necessary under local law to sell and service the **Products**; the training and qualifications to sell and service the **Products** in accordance with this **Sales Agreement**; and successful completion of all **Product Training**.
- b. **“Charger”** means the battery charger which is sold by **Company**.
- c. **“Clinical Tools and Supplies”** shall mean **Products** sold and / or provided at no charge by **Company** for use by **Customer** in fitting and supporting **Patient Systems**.
- d. **“Company”** shall have the meaning set forth in the **Earlens Sales Agreement**
- e. **“Company Trademarks”** means all trademarks, trade names, and logos which **Company** affixes to, or otherwise uses in connection with, **Products** to distinguish its goods and services, whether registered or not, whether owned by, controlled by or licensed to **Company**, including, without limitation: Earlens®.
- f. **“Company Software”** means all software, including source and object code, which is owned by, controlled by or licensed to **Company** and is included in or used with **Products**, including, without limitation, **ELF Software**.
- g. **“Concierge Program”** shall mean **Company’s** outreach program for patients who purchase **Products**, **Systems**, or **Service Plans**.
- h. **“Confidential Information”** means any proprietary information, technical data, trade secrets or know-how disclosed to **Customer** by **Company**, including, but not limited to: this **Sales Agreement**; **Product Documentation**; **Company Software** and **Product pricing and sales terms and conditions**.
- i. **“Consignment Inventory”** shall have the meaning set forth in the **Earlens Sales Agreement**.
- j. **“Customer”** shall have the meaning set forth in the **Earlens Sales Agreement**.
- k. **“Ear Tip”** means the component of the **Patient System** sold by **Company** that resides in the ear canal of a **Patient**.
- l. **“Effective Date”** means the date the **Earlens Sales Agreement** is executed by **Company**.
- m. **“Earlens Sales Agreement”** means an agreement between **Company** and **Customer** which incorporates by reference and/or is subject to these **Earlens Sales Terms and Conditions**.
- n. **“ELF Software”** means the fitting software used to program the **Processor** which is licensed to **Customer** by the **Company**.
- o. **“Fitted Ear”** shall have the meaning set forth in Article XIV of these **Earlens Sales Terms and Conditions**.
- p. **“Impression Kit”** means supplies sold or provided by the **Company** and used to produce an impression of a **Patient’s** ear canal.
- q. **“Initial Clinical Supplies”** shall mean the supplies provided to **Customer** as part of **Product Training**.
- r. **“Mineral Oil”** means oil used by the **Patient** as part of maintenance of the **Patient System**.
- s. **“Off Label”** means use of **Products** in a manner which is not consistent with the product indication cleared by the **USFDA**.
- t. **“Order Form”** shall mean a form provided by **Company** and used by **Customer** to order **Products** under this **Sales Agreement**.
- u. **“Patient”** shall mean the end user of **Products** sold by **Company** to **Customer** under this **Sales Agreement**.
- v. **“Patient System”** means a **Processor**, **Ear Tip**, **Tympanic Lens** and **Charger** purchased together for an individual **Fitted Ear** of a **Patient**.
- w. **“Product Training”** is training specified by **Company** and conducted by a **Company** representative or a person trained by a **Company** representative.
- x. **“Processor”** means the **Patient System** component which includes the microphone, battery and signal processing circuitry and is sold by **Company**.
- y. **“Product(s)”** shall mean **Company’s** products sold to or provided to **Customer** under this **Sales Agreement**.



- z. **“Product Documentation”** means all documentation provided by **Company**, including, without limitation: Instructions for Use (“IFUs”); and **Practice Marketing Materials**.
- aa. **“Replacement Lenses”** shall, unless defined in the **Earlens Sales Agreement**, have the meaning set forth in Article XIV of these **Earlens Sales Terms and Conditions**.
- bb. **“Return Period”**, unless defined in the **Earlens Sales Agreement** or a longer period is required under applicable state law, means Sixty (60) days from the appointment date specified by **Customer** in the **Order Form** for the **Patient System, Tympanic Lens, Ear Tip** or **Processor** to be returned
- cc. **“Sales Agreement”** means: the **Earlens Sales Agreement** executed by **Company** and **Customer**; any **Order Form** referencing the **Earlens Sales Agreement**; along with the **Earlens Sales Terms and Conditions** set forth herein.
- dd. **“Trained Physician”** means licensed physicians who are **Authorized Users**.
- ee. **“Tympanic Lens”** means the component of the **Patient System** which sits on the **Patient’s** tympanic membrane and is sold or provided by the **Company**
- ff. **“Warranty”** means the **Warranty** provided under this **Sales Agreement**.
- gg. **“Warranty Term”** means:
- For components of a **Patient System** sold as a package, three (3) years from the appointment date specified by **Customer** in the **Order Form** for the initial **Patient System**;
 - For a **Tympanic Lens** purchased individually (not as part of a **Patient System**), one (1) year from the appointment date specified by **Customer** in the **Order Form** for the purchased **Tympanic Lens**;
 - For an **Ear Tip** purchased individually (not as part of a **Patient System**), one (1) year from the appointment date specified by **Customer** in the **Order Form** for the purchased **Ear Tip**;
- For a **Processor** purchased individually (not as part of a **Patient System**), three (3) years from the appointment date specified by **Customer** in the **Order Form** for the purchased **Processor**; and for a **Charger** sold individually (not as part of a **Patient System**), three (3) years from the date the purchased **Charger** is shipped to **Customer**.
- II. ORDER AND ACCEPTANCE.** Orders must be made by written or telephonic or electronic ordering methods approved by **Company**. All orders are subject to the **Company** price list in effect at the time such order is placed. **Company** will not take orders for any **Product** that is not on **Company’s** then current price list. Orders are not binding until accepted by **Company** in writing. All orders are subject to **Company’s** then current lead times, provided that **Company** is entitled to use its discretion in determining order of shipment and is expressly not required to use a first-in-first-out (FIFO) order. Orders for **Tympanic Lenses** will only be accepted from **Trained Physicians** or those acting pursuant to a **Trained Physician’s** prescriptive authority.
- III. RESERVED.**
- IV. SHIPMENT SCHEDULING AND DELIVERY.** **Company** will use commercially reasonable efforts to meet shipment schedules. However, any shipment date or forecast on an order acknowledgment is only an estimate of the time required to make shipment.
- V. RISK OF LOSS AND ACCEPTANCE.** Shipments are FOB **Earlens’ Facility**, at which time risk of loss will pass to **Customer**. **Customer** is deemed to have accepted **Products** when they arrive at **Customer’s** facility.
- VI. SHIPPING AND TRANSPORTATION.** Except as expressly set forth herein, all freight, insurance and other expenses associated with shipping **Products** to **Customer** are **Customer’s** responsibility. **Company** shall have the right to purchase shipping insurance on **Customer’s** behalf and charge **Customer** for such insurance. **Company** shall have the right to choose the shipper. Any additional charges resulting from **Customer’s** special shipping instructions shall be the responsibility of **Customer**. Where **Company** is required under the terms of this **Sales Agreement** to pay any shipping costs, such requirement will only apply to shipments within the Continental United

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States, all shipments outside the Continental United States will be subject to additional charges to **Customer**.

VII. PRODUCTS, TAXES, PAYMENT, DISCOUNTS AND REBATES. **Company** reserves the right to modify the **Products**, to make substitutions and modifications of the specifications of the **Products**, or to replace the **Products** with other products, as it deems necessary or appropriate. Amounts due are payable in United States Dollars. Taxes, including, without limitation, sales and use taxes (but excluding income taxes), are **Customer's** responsibility. The pricing for **Products** provided under this **Sales Agreement** may reflect or be subject to discounts, rebates or other price reductions, which **Customer** may be obligated to disclose or report to payors.

VIII. SECURITY INTERESTS. **Company** reserves a purchase money security interest in **Products** sold and the proceeds thereof in the amount of the purchase price. In the event of default by **Customer** in any of its obligations to **Company** hereunder, **Company** will have the right to repossess the **Products** sold hereunder without any liability to **Customer**. Such security interest will be satisfied by payment in full. On request of **Company**, **Customer** will execute financing statements and other instruments that **Company** may request to perfect **Company's** security interest.

IX. RETURNED GOODS – SYSTEM PRODUCTS. All **Product** sales are final, returns will only be accepted pursuant to the terms of this **Sales Agreement**. In the event **Customer** wishes to return a **Patient System** within the **Return Period** or encounters a defective **Product** which fails to conform to the **Warranty** provided under this **Sales Agreement**, **Customer** shall contact **Company** to obtain instructions for such return. Unless instructed otherwise by **Company**, **Customer** shall ship returned **Products** to **Company** FOB **Company's** repair facility; insured and freight prepaid; and following all shipping and other requirements specified by **Company**, including, where applicable, following all laws and regulations for shipping biohazards. Where specifically instructed by **Company**,

Company may pick up returned **Products** at **Customer's** facility and **Customer** shall make such returned **Products** available to **Company** at the time of such pickup. If **Products** are returned for failure to comply with the **Warranty** set forth herein and **Company** confirms that returned **Products** fail to conform to the **Warranty**, **Company** will, subject to the limitations set forth herein: (i) repair or replace those **Products**, or refund the purchase price thereof, at **Company's** sole option, and (ii) reimburse **Customer** for reasonably documented shipping expenses, including insurance. **Company** may, at its discretion replace returned **Products** which fail to conform to the **Warranty** with new or refurbished **Products** or components. All returns made under the **Warranty** must be made before expiration of the applicable **Warranty Term**.

X. ACCESS TO PROCEDURES AND PRODUCTS. Provided that patients are willing to grant appropriate permissions and releases, **Customer** shall allow **Company** representatives to observe procedures conducted using **Products**. **Customer** shall make **Products** reasonably available and **Company** shall have the right (during reasonable business hours and with at least one day advance notice to **Customer**) to enter **Customer's** premises for the purpose of: set-up, inspecting, upgrading (including software upgrades), accessing, repairing and/or obtaining data from **Products** then in **Customer's** position or control; and confirming **Customer's** compliance with the terms of this **Sales Agreement**. Unless expressly requested by **Customer**, **Company** shall not exercise the right of entry granted hereunder more often than once every month. **Customer** shall, where and when applicable, assist **Company** in establishing and maintaining internet access to **Products** to facilitate upgrades and **Company** access to data. **Company** expressly reserves the right to upload, access, use, disclose etc. data stored on **Products**. In the event that **Patient** consent is required for such access, **Customer** agrees to obtain such patient consent prior to loading that **Patient's** data into **Products**.

XI. COOPERATION AND REPORTING. **Customer** agrees to comply with applicable laws, rules and regulations in

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its use of the **Products** and to provide information and assistance to **Company** and regulatory authorities as is reasonably necessary to enable **Company** to comply with requirements imposed on **Company** as a medical device manufacturer under applicable contracts, laws, rules and regulations. Such requirements may include, without limitation, requirements relating to product liability, to product recalls and to medical device reporting requirements regarding deaths and serious injuries related to the **Products**. **Customer** shall inform **Company** within 72 hours if **Customer** becomes aware of a reportable event concerning the safety of any **Product**, including, without limitation, the use of a **Product** that may have caused or contributed to death or to any injury that results in permanent impairment of a body function.

XII. LIMITATIONS ON USE. **Customer** will use **Products** in compliance with all applicable laws, rules and regulations. **Customer** will use **Products** only in a manner consistent with the **Product Documentation** terms and conditions of this **Sales Agreement**. **Company** reserves the right not to provide **Products** to any entity or person that **Company** reasonably believes is using or intends to use the **Products** in violation of the terms of this **Sales Agreement**. **Customer** acknowledges that its use of the **Products** (including the **Company Software**) is subject to compliance with the usage and other requirements described in this **Sales Agreement**. **Customer's** license to the **Company Software** will terminate automatically in the event **Customer** fails to comply with such requirements.

XIII. FOLLOW-ON PRODUCT ORDERS. Unless **Company** and **Customer** enter into a separate agreement covering such purchases, all purchases by **Customer** of **Products** are subject to this **Sales Agreement** and the Product Sale Terms and Conditions set forth herein (as updated from time to time prior to such sales and published at earlens.com/salesterms).

XIV. LIMITED WARRANTY

a. **Repair After Warranty Term.** Upon expiration of the **Warranty Term** or if the **Warranty** is terminated or voided in accordance with the Terms of this **Sales**

Agreement, repair or replacement, if any, shall be subject to **Company's** then current repair policies and terms, including, without limitation, any applicable charges for non-warranty repair.

b. **Limited Warranty.** **Products** purchased under this **Sales Agreement** shall, during the **Warranty Term** and when used properly by **Authorized Users** and **Patients**, be free from defects in material and workmanship and perform substantially in accordance with **Product Documentation**.

c. **Replacement Products and Components.** Where **Warranty** service under this **Sales Agreement** results in **Customer** receiving replacement **Products** and/or components, such replacement **Products** and/or components shall be subject to this **Warranty**, including the **Warranty Term**, applicable to the original **Products** and/or components.

d. **Limitations.** The **Warranty** provided under this **Sales Agreement**, may, at **Company** discretion, be voided by any of the following: **Customer's** failure to comply with the terms of this **Sales Agreement**; the abuse, misuse, negligent handling (including dropping or exposure to excessive force, such as, for example, the force applied by a Q-Tip or other foreign object inserted into a **Patient's** ear and brought into contact with the **Tympanic Lens**), accident, alteration, or unauthorized repair of **Products**; the use of **Products** in a manner inconsistent with the **Product Documentation**; or **Off Label** use of **Products**. **Company** will make the final determination as to the existence and cause of any alleged defect. Additional representations regarding **Products** other than those expressly set forth herein or in **Product Documentation**, if made other than in writing by an authorized officer of **Company**, should not be relied upon by **Customer** and shall not form a part of this **Sales Agreement** or be binding upon **Company**.

e. **Exceptions.**

1. Damage

In the event that a **Tympanic Lens** is returned to **Company** as a result of damage caused by the insertion of a cotton swab (such as a Q-Tip cotton swab) or other foreign object into the

Patient's ear, Company shall replace the first such returned **Tympanic Lens** for a **Fitted Ear** at no cost to **Customer**. **Company** will thereafter charge **Customer** for any additional replacements resulting from damage caused by the insertion of a cotton swab (such as a Q-Tip cotton swab) or other foreign object into the **Patient's ear**.

- f. **Remedies.** **Customer's** and **Patient's** sole remedies in the event of a breach of the **Warranty** are limited, at **Company** discretion, to repair or replacement (which may include replacement with refurbished **Products** or components) of any **Product** and/or component that failed to conform to the **Warranty** or credit against future purchases from **Company**.
- g. **Transfer.** The **Warranty** set forth herein is solely transferable to a **Patient** purchasing the **Product** covered by the **Warranty** from **Customer**. All warranties run to the benefit of **Customer** and its Patients.
- h. **No Other Warranty.** EXCEPT AS SET FORTH IN THIS SECTION XIV, COMPANY MAKES NO **WARRANTY** OF ANY NATURE WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE **PRODUCTS** OR **PRODUCT DOCUMENTATION**. **COMPANY** EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- i. **Models.** Any model or sample furnished or shown to the **Customer** is merely illustrative of the general type and quality of goods and does not represent that **Products** will conform to the model or sample.

XV. LIMITATION OF COMPANY LIABILITY. **Company** will not be liable for any loss, damages or penalty resulting from delay in delivery, including but not limited to, supplier delay, force majeure, act of God, labor unrest, fire, explosion or earthquake. In any such event, the delivery date will be deemed extended for a period equal to the delay. Representatives of **Company** provide no medical advice or treatment and do not provide healthcare services. **IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR OTHER**

INDIRECT DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCTS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE COMPANY'S LIABILITY FOR DIRECT DAMAGES FOR ANY CLAIM, WHETHER SOUNDING IN BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO COMPANY OVER THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

XVI. CUSTOMER INDEMNIFICATION OF COMPANY.

Customer shall defend, indemnify, and hold harmless **Company** from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any claims, suits, or proceedings arising out of or relating to the use or other exploitation of the **Products**, unless proximately caused solely by: i) the gross negligence or willful misconduct of **Company**; or ii) **Company's** breach of the **Warranty** provided hereunder. **Customer** shall further defend, indemnify, and hold harmless **Company** from and against any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) in connection with any claims, suits, or proceedings arising out of or relating to any failure by **Customer** to comply with the terms of this **Sales Agreement**.

XVII. INTELLECTUAL PROPERTY

a. Trademarks

Subject to **Customer's** compliance with this **Sales Agreement**, **Company** grants **Customer** a personal, non-exclusive, non-transferable (with no right to sublicense) license to use the **Company Trademarks** solely in connection with the authorize use of the **Products** in accordance with this **Sales Agreement** and the advertisement, promotion and marketing of **Products**. **Customer** agrees to comply with all **Company** trademark and advertising guidelines in using **Company's Trademarks**. **Customer's** use of the **Company Trademarks** shall

inure to the benefit of **Company**, and **Customer** shall not at any time acquire any rights in the **Company Trademarks**. **Customer** shall have no claim to any goodwill, reputation or ownership of the **Company Trademarks** by virtue of this **Sales Agreement** or otherwise.

b. Copyrights and Software

Copyrighted works provided to **Customer** by **Company**, including, without limitation, **ELF** software and the **Product Documentation**, are licensed solely for use and promotion of **Company's** products and may not be used for any other purpose. Subject to **Customer's** compliance with this **Sales Agreement**, **Company** grants **Customer** a personal, non-exclusive, non-transferable (with no right to sublicense) license to use the copyrightable material in provided by **Company** solely in connection with the authorized use of the **Products** in accordance with this **Sales Agreement** and the advertisement, promotion, and marketing of the **Products**. **Customer** agrees to comply with all **Company** copyright and advertising guidelines in using the copyrightable material. **Customer** agrees that nothing in this **Sales Agreement** shall give **Customer** any right, title, or interest in any Copyrightable Work other than the right to use the same in accordance with the terms of this **Sales Agreement**. All software and firmware in the **Products** ("**Company Software**") is owned by **Company** or its licensors' and, notwithstanding anything expressed or implied in this **Sales Agreement**, the **Company Software** is licensed to, and not sold to **Customer**, pursuant to the license set forth below. Any references to "sale" or "purchase" in this **Sales Agreement** with respect to the **Company Software** mean the sale or purchase of such license to the **Company Software**. Subject to **Customer's** compliance with this **Sales Agreement**, **Company** grants **Customer** a personal, non-exclusive, non-transferable (with no right to sublicense) license to use the **Company Software** solely in connection with the authorized use of the **Products** in accordance with this **Sales Agreement**. Except where such restriction is prohibited by law and cannot be waived by **Customer**, **Customer** will

not and will not assist any third party to reverse engineer or otherwise attempt to derive or obtain information about the functioning of the **Product**, or the source code of the **Company Software**, to the extent such information and/or source code is not generally made available to end users by **Company**. **Customer** acknowledges that **Company Software** and its structure, organization, and source code constitute valuable trade secrets of **Company** or **Company** licensors.

c. Proprietary Rights

Except as expressly set forth herein, the sale of the **Products** hereunder to **Customer** does not and will not be deemed to confer upon **Customer** any right, interest or license in any patents, patent applications, copyrights, trademarks, trade secrets, **Company Software** or other proprietary rights that **Company** may have covering the **Products**, other than the right to use and sell the **Products** in accordance with this **Sales Agreement** and **Company Documentation**. **Company** retains ownership of all proprietary rights in and to the **Products** and related documentation and all designs, engineering details, and other data and materials pertaining to any **Products** and to all discoveries, inventions, patents, copyrights, trademarks and other proprietary rights arising out of the work done by **Company** in connection with the **Products** or with any and all products developed by **Company** as a result thereof, including the sole right to manufacture any and all **Products**. **Customer** shall not divulge, disclose, or in any way distribute or make use of such information supplied to **Customer** by **Company** except for the sole purpose of using and selling the **Product(s)** purchased hereunder.

d. Indemnification by Company

Company will defend **Customer** at **Company's** expense, as set forth herein, against any claim by a third party that the design or manufacture of any **Product** furnished hereunder constitutes an infringement of an issued U.S. patent or U.S. copyright. **Customer** will notify **Company** promptly in writing of any such claim of infringement and shall give **Company** full authority, information and



assistance in settling or defending such claim. **Company** has no liability whatsoever with respect to any claims settled by **Customer** without **Company's** prior written consent. **Company** has no liability to **Customer** under any provision of this section if any patent infringement or claim thereof is based upon the use of the **Product** as modified by any person other than **Company** or in combination with equipment, devices or parts not made by **Company**, or in a manner that does not comply with the requirements of this **Sales Agreement**. If, with respect to any such claim, the use of the **Product** is, or **Company** determines such use is likely to be, enjoined, then within a reasonable time after such injunction (or determination by **Company**, if applicable), **Company** shall, at its option, in full satisfaction of its obligations hereunder: (i) secure for **Customer** the right to continue using the **Products**, or (ii) at **Company's** expense, replace the **Products** with non-infringing goods, or (iii) remove the enjoined **Products** and refund a pro rata portion of the sums paid therefore, based on four-year straight line depreciation. **Company's** obligations in this paragraph shall not apply to any equipment, device or parts not manufactured by **Company**. THE FOREGOING STATES **COMPANY'S** ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE), AND **CUSTOMER'S** SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT CLAIMS ARISING FROM OR RELATED TO THIS **SALES AGREEMENT**.

XVIII. TERM AND TERMINATION. This **Sales Agreement** shall extend for an initial term of one year and shall be automatically renewed unless terminated by either party by written notice within thirty (30) days prior to its termination date.

XIX. SURVIVAL. The following provisions shall survive any termination of this **Sales Agreement** with respect to **Products** supplied under this **Sales Agreement** prior to such termination: Definitions; Equipment; Security Interest; Returned Goods (for **Products** under **Warranty**); Access to **Products** and Procedures; Cooperation and Reporting; Limitation on

Use; Limited Warranty (for **Products** under **Warranty**); Limitation of **Company** Liability; Customer Indemnification of **Company**; Intellectual Property; Indemnification by **Company**; General.

XX. GENERAL

a. **Confidentiality.** **Customer** shall not, during or subsequent to the term of this **Sales Agreement**, use any **Confidential Information** for any purpose whatsoever other than the purposes consistent with the terms of this **Sales Agreement**, or disclose **Confidential Information** to any third party. **Customer** agrees that **Confidential Information** shall remain the sole property of **Company**. **Customer** further agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of **Confidential Information**. Notwithstanding the above, **Customer's** obligation under this Section relating to **Confidential Information** shall not apply to information which (i) is known to **Customer** at the time of disclosure to **Customer** by **Company** as evidenced by written records of **Customer**, (ii) has become publicly known and made generally available through no wrongful act or omission of **Customer**, or (iii) has been rightfully received by **Customer** from a third party authorized to make such disclosure without an obligation of confidentiality.

b. **Integration.** This **Sales Agreement** constitutes the entire agreement between **Company** and **Customer** with respect to the subject matter hereof and any terms included in any purchase order or other **Customer** documentation which are in addition to or inconsistent with the terms of this **Sales Agreement**, including any terms or conditions in documents which pre-date this **Sales Agreement** are hereby expressly excluded and superseded. This **Sales Agreement** may be modified only by a writing specifying exactly each change to be made to this **Sales Agreement** and only if such writing is signed by an authorized representatives of **Company** and **Customer**. In the event of any conflict between the terms of the **Earlens Sales Agreement** and the terms of these **Earlens Sales Terms and Conditions**, the terms of the **Earlens Sales Agreement** shall



control. Any breach under this **Sales Agreement** may be waived only by a writing signed by an authorized representatives of the non-breaching party.

- c. **Opportunity to Cure.** **Customer's** remedies under this **Sales Agreement** shall not be effective until **Company** has received written notice of any suspected breach and has had a reasonable opportunity to cure such breach.
- d. **Severability.** If any provision of this **Sales Agreement** is held to be void, invalid or unenforceable, the same shall be reformed to give the fullest effect to the intention of the parties while complying with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this **Sales Agreement**.
- e. **Waivers.** The failure by **Company** to enforce at any time any of the provisions herein, or to require at any time the performance by **Customer** of any of the provisions herein, will not in any way be construed as a waiver of such provisions.
- f. **Assignment.** Neither party may assign this **Sales Agreement** without the prior written consent of the other party, provided that **Company** may assign this **Sales Agreement**, without **Customer's** consent, to a person or entity that succeeds to all or substantially all of **Company's** business or assets pertaining hereto (whether by merger, sale of assets or stock, reincorporation, reorganization, operation of law or otherwise) and further provided that **Company** may assign rights to receive payments from **Customer** to a third party without **Customer's** consent .
- g. **Export.** **Customer** agrees to comply with all applicable export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce.
- h. **Applicable Law; Dispute Resolution.** The laws of the State of California govern this **Sales Agreement** without regard to conflict of laws principles or any other principles that would result in the application of a different body of law. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from this **Sales**

Agreement. Any controversy or claim arising out of or relating to this **Sales Agreement**, or its breach, shall be subject to non-binding mediation prior to binding arbitration in San Francisco, California, under the then-current Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed in accordance with such Rules. The arbitrator shall issue a written report to the parties, detailing the basis of any arbitration award. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The costs of the arbitration, including administrative and arbitrator's fees, shall be shared equally by the parties. Each party shall bear the cost of its own attorneys' fees and expert witness fees. Notwithstanding the foregoing, neither party shall be precluded, at any time, from seeking injunctive relief or other provisional relief prior to or during an arbitration pursuant to this Section necessary to protect the interests of such party.