

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

|                              |                   |
|------------------------------|-------------------|
| <b>SUBMISSION TYPE:</b>      | NEW ASSIGNMENT    |
| <b>NATURE OF CONVEYANCE:</b> | Exclusive license |

**CONVEYING PARTY DATA**

| Name               | Formerly | Execution Date | Entity Type                               |
|--------------------|----------|----------------|---|
| LDR MEDICAL, S.A.S |          | 12/22/2004     | Societe par Actions<br>Simplifiee: FRANCE |

**RECEIVING PARTY DATA**

|                        |                                  |
|------------------------|----------------------------------|
| <b>Name:</b>           | LDR Medical USA, Inc.            |
| <b>Street Address:</b> | 4030 West Braker Lane, Suite 360 |
| <b>City:</b>           | Austin                           |
| <b>State/Country:</b>  | TEXAS                            |
| <b>Postal Code:</b>    | 78759                            |
| <b>Entity Type:</b>    | CORPORATION: DELAWARE            |

**PROPERTY NUMBERS Total: 8**

| Property Type  | Number   | Word Mark   |
|----------------|----------|-------------|
| Serial Number: | 78514843 | LDR MEDICAL |
| Serial Number: | 78514775 | EASYSPIKE   |
| Serial Number: | 78514787 | ROI         |
| Serial Number: | 78514794 | MC+         |
| Serial Number: | 78514803 | LAMINOTOME  |
| Serial Number: | 78514813 | BF+         |
| Serial Number: | 78514818 | MOBIDISC    |
| Serial Number: | 78514826 | MOBI-C      |

**CORRESPONDENCE DATA**

Fax Number: (512)542-5229  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 512-320-9247  
 Email: cmarischen@akllp.com  
 Correspondent Name: Clarissa Marischen

CH \$215.00 78514843

Address Line 1: 111 Congress Avenue, Suite 1700  
Address Line 4: Austin, TEXAS 78701

|                    |                      |
|--------------------|----------------------|
| NAME OF SUBMITTER: | Clarissa Marischen   |
| Signature:         | /clarissa marischen/ |
| Date:              | 02/07/2005           |

**Total Attachments: 9**  
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## TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement ("**Agreement**"), dated as of December 22, 2004, is between LDR MEDICAL, S.A.S., a French company ("**Licensor**"), and LDR Spine USA, Inc., a Delaware corporation ("**Licensee**").

### INTRODUCTION

WHEREAS, Licensor and Licensee are parties to that certain Exclusive Distribution Agreement dated as of December 22, 2004 (the "**Distribution Agreement**"), wherein Licensee was appointed exclusive distributor of certain Licensor products within the United States.

WHEREAS, Licensor owns and has the right to license the trademarks set forth on Attachment A hereto (collectively, the "**Licensed Marks**").

WHEREAS, Licensee desires to use the Licensed Marks in connection with the exercise of its rights under the Distribution Agreement, and Licensor is willing to grant Licensee such a license under the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the terms defined above shall have the meanings set forth above and:
  - a) "**Products**" shall mean the medical devices and instrumentation which are the subject of the Distribution Agreement, including "Improvements" and "Future Products" as those terms are defined in such Distribution Agreement.
  - b) "**Territory**" shall mean the United States and such additional jurisdictions as the parties may otherwise agree in writing from time to time during the term of this Agreement.
  - c) The terms "**trademark**," "**trade name**," and "**service mark**" shall have the meanings given them in the Lanham Act (15 U.S.C. 1051 et seq.) as amended. The term "**mark**" shall refer to a trademark and/or service mark.
  
2. GRANT OF RIGHTS. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a nontransferable, royalty-free, exclusive license to use the Licensed Marks in connection with the importation, use, repair, sale and offer for sale of Products in the Territory and to sublicense such license rights to sub-distributors permitted pursuant to the Distribution Agreement. This grant shall include the right of Licensee to authorize third parties to use the Licensed Marks in connection with the manufacture of Products in the event of

an "Unremedied Supply Deficiency" as described in the Distribution Agreement. During the term of this Agreement, Licensor agrees not to use or to license any third party other than Licensee the right to use the Licensed Marks in connection with Products anywhere in the Territory.

3. PRODUCT QUALITY. Licensee agrees that the nature and quality of all Products or other goods or services sold by Licensee under the Licensed Marks and all related advertising, promotional and other related uses of the Licensed Marks by Licensee shall conform to standards set by and be under the control of Licensor. Licensee agrees to cooperate with Licensor in facilitating Licensor's control of the nature and quality standards specified in this Section 3, to permit reasonable inspection of Licensee's operation, and to supply promptly to Licensor at its request examples of all printed promotional materials and to advise of all use of the Licensed Marks. Licensee shall consult with Licensor in advance as to any desired use of Licensed Marks and shall submit proofs of each proposed use on stationery, printing or advertising copy and plans for all other utilizations, whether on structures, on commercial signs or elsewhere. Licensee shall not utilize the Licensed Marks until each such use is approved in writing by Licensor.
4. WARRANTIES. Licensor represents and warrants to and covenants with Licensee as follows:
  - a) Licensor is the owner of the Licensed Marks and has the right and authority to grant the exclusive license to the Licensed Marks granted to Licensee in this Agreement. Licensor has not entered into, nor will it enter into during the term of this Agreement, any license or other agreement with any third party that grants, transfers or confers any right to the Licensed Marks that restricts, violates, conflicts with or impairs any of the rights granted to Licensee under this Agreement.
  - b) The use of the Licensed Marks as contemplated hereunder by Licensee and any permitted sub-licensees does not and will not infringe or violate any trademark, copyright, or other proprietary right of any person or entity. No action has been asserted nor, to the best of Licensor's knowledge, been threatened, claiming that the Licensed Marks infringe any common law or registered trademark, trade name or other proprietary right of any third party.
  - c) To the best of Licensor's knowledge, no service or trademark of any other party infringes upon the Licensed Marks.
  - d) Licensor agrees to reimburse Licensee for all costs incurred by Licensee in connection with the preparation and submission of applications for registration of the Licensed Marks within the Territory and agrees that it will pay all additional costs associated with maintenance of such

applications and any resulting registrations during the term of this Agreement.

5. INDEMNITY.

- a) Licensor agrees to protect, defend, indemnify and hold harmless Licensee, its agents, shareholders, employees, officers, directors, subsidiaries and affiliates, successors and permitted assigns (individually, an "Indemnified Party"; collectively, the "Indemnified Parties"), from and against any and all claims, lawsuits, demands, actions, liabilities, losses, damages, costs, and expenses (including but not limited to the amount of any judgment, penalty, interest, court costs and reasonable attorneys' fees) (collectively, "Claims"), arising out of or resulting from: (i) Licensor's breach of the representations and warranties set forth in Section 4, or (ii) Claims that the Licensed Marks infringe the rights of third parties. Notwithstanding the foregoing, nothing herein shall permit the Indemnified Parties from recovering any amount in excess of actual losses, damages, costs and expenses which amounts shall not be duplicated on behalf of such Indemnified Parties.
- b) Licensee shall notify Licensor promptly in writing of a Claim for which it may seek indemnification from Licensor under this Section 5. The Indemnified Party shall have the right to participate in the defense of the Claim through counsel of its selection at its own expense. Licensor shall have the right at all times, in its sole discretion, to control the defense of the Claim, and no claim shall be settled without Licensor's prior consent. Licensor's right to settle such Claims and control the defense thereof shall not diminish Licensor's obligation to indemnify and hold harmless as set forth herein.
- c) The foregoing indemnity in this Section 5 for infringement of proprietary rights shall not apply to claims arising in connection with Licensee's use of the Licensed Marks in a manner or for a purpose not contemplated by this Agreement.

6. WARRANTIES AND OTHER COVENANTS BY LICENSEE.

- a) Licensee agrees that it will not use the Licensed Marks except as permitted by this Agreement. The Licensed Marks shall be used and displayed in such a manner that their distinctiveness, validity, or reputation is not impaired. In this regard, but without limitation, and unless Licensor shall have given its prior consent in writing:
  - i) Licensee shall not make the Licensed Marks a part of any trademark or service mark belonging to Licensee or any other party, but may display the Licensed Marks in conjunction with another mark, provided that the Licensed Marks are identifiable as

a separate mark and are properly identified as a registered mark with the symbol "®" or "™"; and

ii) Licensee shall not use the Licensed Marks or any confusingly similar mark in connection with any trade name or corporate name, unless such use is made in connection with and is identifiable with the Products, as licensed in this Agreement.

b) Licensee agrees to use the Licensed Marks properly as a trademark or service mark, by, for example: (i) using the symbol "®"; (ii) including the statutory language "Registered in US Patent and Trademark Office" or "Reg. US Pat. & Tm. Off."; or (iii) using the Licensed Marks as an adjective followed by generic terms. Licensor and Licensee recognize, however, that use of trademark registration symbols and generic terms every time a mark is used on a particular item may be awkward and is not necessary in order to make acceptable trademark or service mark usage. Advertising, packaging and labeling by Licensee shall be made available to Licensor from time to time for the purposes of satisfying Licensor of Licensee's compliance with this Section 6.

c) Licensee represents and warrants to and covenants with Licensor that it has not, before or since the filing date of the applications for registration of the Licensed Marks within the Territory, entered into any license or other agreement with any third party that grants, transfers or confers any right to the Licensed Marks to such third party.

7. LICENSOR'S RIGHTS/OWNERSHIP OF LICENSED MARKS. Licensee hereby acknowledges that Licensor is the sole and rightful owner of the Licensed Marks and all goodwill attached to the Licensed Marks and that Licensor and its successors and assigns shall retain full right to the Licensed Marks, all registrations granted with respect to the Licensed Marks, and all the goodwill associated therewith, subject only to the authorization of Licensee by Licensor to use the Licensed Marks as permitted by this Agreement. Licensee agrees that use of the Licensed Marks by Licensee pursuant to this Agreement shall inure to the benefit of Licensor.

8. ASSIGNMENT. Neither this Agreement, nor any rights hereunder may be assigned or otherwise transferred by either Party, in whole or in part, without the prior written consent of the other Party; provided, however, that this Agreement may be assigned by both Parties in the event of the acceptance of an acquisition offer by the combined parties as contemplated in the Price Sharing Agreement between the Parties dated as of December 22, 2004. Any attempt at assignment in violation of this Section 8 shall be null and void. This Agreement shall be binding upon and for the benefit of Licensor, its legal representatives, successors and assigns.

9. LIMITATIONS ON SUB-LICENSING BY LICENSEE.

- a) Licensee may not grant any sub-licenses to any third party in connection with the Licensed Marks, the Products or any other rights, privileges or licenses granted hereunder except in the event of an "Unremedied Supply Deficiency" as described in the Distribution Agreement.
- b) Licensee hereby agrees that it shall not enter into any sub-licensing agreement for a duration which exceeds the duration of this Agreement and that in the event any sub-licensing agreement is scheduled to expire on a date subsequent to the expiration of this Agreement any such sub-licensing agreement shall terminate automatically upon the expiration or termination of this Agreement.
- c) Licensee agrees that the rights granted by such sub-licenses with respect to the Licensed Marks shall not exceed the rights granted by Licensor to Licensee pursuant to this Agreement.

10. TERM AND TERMINATION.

- a) This Agreement shall commence on the date first above written and shall remain in effect for the duration of the Distribution Agreement.
- b) This Agreement shall terminate concurrently with termination of the Distribution Agreement. The obligations set forth in Section 5 (Indemnification) of this Agreement shall survive termination of this Agreement, provided that the events giving rise to the cause of action occurred during the term of this Agreement.
- c) Upon termination of this Agreement, Licensee agrees immediately to discontinue all use of the Licensed Marks, to cooperate with Licensor or its appointed agent to apply to the appropriate authorities to cancel recordings of this Agreement or other documents from all government records, to destroy all printed materials bearing the Licensed Marks, and to take such other actions as shall be necessary to insure that all rights in the Licensed Marks and the goodwill connected therewith shall remain the property of Licensor. The foregoing notwithstanding, Licensee may sell its remaining inventory of Products bearing the Licensed Marks as permitted pursuant to the provisions of the Distribution Agreement.

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11. NOTICES. All notices must be in writing and delivered by registered air mail or by facsimile number or e-mail, with confirmation of receipt, to the Parties as specified below.

a) If to Licensor:

LDR MEDICAL, S.A.S.  
Technopole de l'aube – BP2  
10 902 TROYES Cedex 9  
France  
Attention: Christophe Lavigne  
Facsimile:  
E-mail:

b) If to Licensee:

LDR Spine USA, Inc.  
108 Wild Basin Road, Suite 223  
Austin, Texas 78746  
Attention: Gerald DeVries  
Facsimile: 512-233-2405  
E-mail: jerrydevries@path4.com

12. RELATIONSHIP OF THE PARTIES. This Agreement does not make either party the agent of the other, create a partnership or joint venture between the parties or any relationship other than that of Licensor and Licensee, nor shall this Agreement give either party the power to obligate or bind the other in any manner whatsoever.

13. HEADINGS. The headings and captions used in connection with the Sections and paragraphs of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any other manner affect the scope, meaning or intent of the provision of this Agreement or any part thereof; nor shall such captions otherwise be given any legal effect.

14. GOVERNING LAW. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Delaware and applicable federal law, without reference to any conflicts of laws or principles that may require reference to the laws of other jurisdictions.

15. SEVERABILITY. If any provision of this Agreement should be determined by a court of competent jurisdiction to be void or in any measure unenforceable, the parties intend that such determination shall amend or modify this Agreement by eliminating or modifying only those provisions affected by the determination.


16. AMENDMENTS. This Agreement may be amended or modified only by a written agreement signed by the Licensor and Licensee.



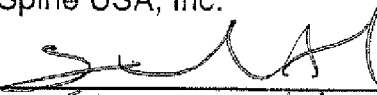
17. ENTIRE AGREEMENT. This Agreement and the Distribution Agreement contains a complete statement of the agreements between the parties with respect to its subject matter, and cannot be changed or terminated orally, and will be binding upon and shall inure to the benefit of Licensor's successors and assigns and Licensee's successors assigns permitted and approved in accordance with his Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

LICENSOR:  
LDR MEDICAL, S.A.S.

By:   
Name: L. ALLGÖVE  
Title: President

LICENSEE:  
LDR Spine USA, Inc.

By:   
Name: STEVEN J. WHITTICK  
Title: PRESIDENT

**SCHEDULE A  
TO THE  
TRADEMARK LICENSE AGREEMENT**

**LICENSED MARKS**

| <u>Mark</u> | <u>U.S. Application<br/>Serial Number</u> |
|-------------|---|
| LDR MEDICAL | 78/514,843                                |
| EASYSPINE   | 78/514,775                                |
| ROI         | 78/514,787                                |
| MC+         | 78/514,794                                |
| LAMINOTOME  | 78/514,803                                |
| BF+         | 78/514,813                                |
| MOBIDISC    | 78/514,818                                |
| MOBI-C      | 78/514,826                                |