

CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement (“**Agreement**”) is effective as of the date of the last party to sign this Agreement (“**Effective Date**”)

Between:

[Company], a corporation organized and existing under the laws of _____, with offices at _____ (“**Company**”); and

[Institution Name] an Institution with offices at address _____ (“**Recipient**”). Company and Recipient are referred to herein individually as a Party and collectively as the Parties.

The Parties agree as follows:

1) Definitions

“**Affiliate**” means, with respect to a Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. “Control” and, with correlative meanings, the terms “controlled by” and “under common control with” mean (a) the power to direct the management or policies of a Person, whether through ownership of voting securities or by contract relating to voting rights or corporate governance, resolution, regulation or otherwise, or (b) to own 50% or more of the outstanding voting securities or other ownership interest of such Person.

“**Company Subject Matter**” means all information and data of any kind revealed by Company or any of its Affiliates to Recipient or otherwise obtained by Recipient from Company or any of its Affiliates, related to Company or any of its Affiliates or their respective materials, or the Company or any of its Affiliates support for research programs discussed for consideration for the SPARC Initiative NIH-Industry Partnership towards Clinical Utility of Market-approved Devices to Support New Market Indications.

“**Confidential Information**” means all information, other than Exempt Information, in any form concerning Company Subject Matter, including any information disclosed via Company or any of its Affiliates providing access to Recipient’s employees to such Company Subject Matter, and information which Company or its Affiliates discloses to the Recipient or its Representatives pursuant to this Agreement. The Company may also disclose confidential information of a third party, and such confidential information will be included within the scope of the Company’s Confidential Information under this Agreement (and must be treated accordingly by Recipient).

“**Exempt Information**” means information that: (i) the Recipient or any of its Affiliates possessed, without an obligation to the Company or any of its Affiliates to keep it confidential, before Company or its Affiliates disclosed it under this Agreement, as evidenced by written records; (ii) is or becomes publicly known (other than as a result of breach of this Agreement by the Recipient or its Representatives); (iii) the Recipient or any of its Affiliates obtains from a third party free of any confidentiality obligation to Company or its Affiliates with respect to such information; or (iv) is independently developed by or on behalf of the Recipient or its Affiliates without the use of the Confidential Information.

“**Person**” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

“Purpose” means the purpose of the evaluation of a potential business relationship between the Parties for the NIH SPARC Initiative NIH-Industry Partnership towards Clinical Utility of Market-approved Devices to Support New Market Indications

2) Treatment of Confidential Information

- (a) The Recipient shall maintain the confidentiality of Company’s Confidential Information with at least the same degree of care as it maintains the confidentiality of its own confidential information of like importance, and in any event, not less than a reasonable standard of care.
- (b) The Recipient may use, copy and make extracts of Company’s Confidential Information only in connection with the Purpose. The Recipient agrees that it shall not, at any time during or after this Agreement remains in effect, engage in any invasive testing of any sample, prototype or other product of the Company or any of its Affiliates, including, but not limited to, any x-ray or destructive analysis or any reverse engineering.
- (c) The Recipient shall not disclose any of Company’s Confidential Information to any third party other than the Recipient’s Affiliates and the directors, officers, employees, contractors, consultants and agents of the Recipient and its Affiliates who have a need to know the Confidential Information for the Purpose and who are bound by obligations of confidentiality at least as restrictive as those in this Agreement (collectively, **“Representatives”**). The Recipient is liable to Company for any use or disclosure of the Confidential Information in violation of the terms of this Agreement by any Representatives to whom the Recipient discloses such Confidential Information under this clause 2(c). The Recipient shall notify the Disclosing Party immediately upon its discovery of any unauthorized use or disclosure of the Confidential Information or any breach of this Agreement and reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure
- (d) Upon Company’s request, and in any event upon termination of this Agreement, the Recipient shall promptly return to Company or, at Company’s option, destroy all copies of Confidential Information and, except as set out in clause 2(e) below, the Recipient shall destroy all additional copies, in whatever medium, of Confidential Information then in its or its Representatives’ possession. Upon Company’s request, the Recipient shall confirm in writing as to such destruction.
- (e) Section 2(d) notwithstanding, the Recipient: (i) may retain a single copy of Company’s Confidential Information for the sole purpose of ascertaining its ongoing rights and responsibilities in respect of such information; and (ii) shall not be required to destroy any computer files stored securely by the Recipient or its Affiliates that are: (x) created during automatic system back up; or (y) retained for legal purposes by the legal division of the Recipient and its Affiliates; provided, that any Confidential Information retained by Recipient must be kept confidential in accordance with this Agreement.
- (f) Anything to the contrary contained herein notwithstanding, the Recipient shall be permitted to disclose (and the Recipient shall not be required to destroy) any of Company’s Confidential Information that is required to be disclosed by a governmental authority or applicable law in connection with a legal or administrative proceeding (including in connection with any regulatory approval process), provided that the Recipient shall: (i) provide reasonable prior written notice to Company of any such disclosure requirement; (ii) cooperate with Company (at Company’s cost) if Company seeks a protective order or other remedy in respect of any such disclosure; and (iii) furnish only that portion of the Confidential Information which the Recipient is legally required to disclose.

3) Term and Termination

The term during which disclosures may be made and received under this Agreement will be for twelve (12) months from the Effective Date. Either party may terminate this Agreement by providing a thirty (30) day written notice to the other party. The Recipient's obligations under this Agreement will terminate five (5) years from the Effective Date.

4) No Representation or Warranty

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. COMPANY HEREBY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, OR OTHER TERMS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION IT PROVIDES HEREUNDER, INCLUDING ANY REPRESENTATION OR WARRANTY OF ACCURACY, COMPLETENESS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. COMPANY SHALL NOT HAVE ANY LIABILITY, DIRECT OR INDIRECT, TO RECIPIENT FOR ANY DAMAGES THAT MAY ARISE AS A RESULT OF THE RECIPIENT'S USE OF THE CONFIDENTIAL INFORMATION OR ANY ERRORS THEREIN OR OMISSIONS THEREFROM.

5) Other Matters

- (a) Each Party represents and warrants to the other that it has the legal power and authority to enter into and perform under this Agreement.
- (b) All Confidential Information (and all derivatives thereof) will remain the property of the Company. Neither this Agreement nor the performance by either Party shall transfer to the Recipient any proprietary right, title, interest or claim in or to any of Company's Confidential Information (including any intellectual property rights subsisting therein).
- (c) Neither Party is obligated to negotiate or enter into any other agreement, and any discussions may be terminated at the sole discretion of either Party at any time and for any reason. Unless and until a definitive agreement is executed and delivered by the Parties, neither Party is under any legal obligation of any kind with respect to any transaction, except for the matters specifically agreed to in this Agreement.
- (d) A waiver by either Party of any term or condition of this Agreement must be in writing signed by the waiving party. A waiver in one instance of a term or condition shall not be deemed a waiver of such term or condition in any other instance.
- (e) This Agreement sets forth the Parties' entire understanding about its subject matter and supersedes any other agreement or understanding between the Parties about its subject matter. Neither Party can assign, amend, or terminate any part of this Agreement except in writing signed by both Parties.
- (f) Each Party shall maintain confidential the terms of this Agreement and the content of discussions covered thereby, and each Party shall refrain from making any announcement or any other public disclosure in respect thereof (except as required under applicable laws and regulations) without the prior written consent of the other Party.
- (g) The Recipient acknowledges and agrees that any breach or threatened breach by it or its Representatives of this Agreement may cause the Company irreparable injury for which there is no adequate remedy at law. Therefore, the Company will be entitled, in addition to any other remedies available (including, but not limited to, monetary damages), to seek injunctive or other equitable relief.

- (h) If a court or other tribunal of competent jurisdiction should hold any term or provision of this Agreement to be excessive, invalid, void or unenforceable, the offending term or provision shall be deleted or revised to the extent necessary to be enforceable, and, if possible, replaced by a term or provisions which, so far as practicable, achieves the legitimate aims of the Parties.
- (i) This Agreement may be executed in two counterparts (including by facsimile or electronic copies), both of which shall be deemed an original, and both of which together shall constitute one and the same instrument.
- (j) The interpretation and construction of this Agreement shall be governed by Federal law or the law of the State of Delaware, as applicable, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- (k) A breach by of this Agreement by Recipient may cause irreparable harm for which the non-breaching party will not be adequately compensated by monetary damages. In the event of a breach, or threatened breach, of this Agreement, Company shall be entitled to seek equitable relief from any court of competent jurisdiction, whether preliminary or permanent, without the need to post a bond or other security. Nothing in this section 5(j) is intended, or shall be construed, to limit Company's right to any other remedy for a breach of any provision of this Agreement.
- (l) All references to Company include its parent company _____ and all entities owned by the parent company, or by an entity in which the parent company, has a direct or indirect ownership of at least fifty percent.
- (m) Neither party, by virtue of this Agreement, is under any obligation to the other party to disclose any Confidential Information under this Agreement, or to negotiate or conclude any substantive business agreement or other agreement related to the Company Subject Matter. Each party bears its own costs with respect to their discussions of the Company Subject Matter, unless otherwise agreed. Each party acknowledges that neither party nor any of its respective directors, officers, employees, agents, representatives or advisors has made or makes any representation or warranty as to the accuracy or completeness of the Confidential Information. Recipient acknowledges that Company may, provided that Company does not breach its obligations hereunder, (i) presently have and continue internal research or development of concepts, products or technologies similar to or in competition with Recipient's concepts, products or technologies, (ii) undertake such research or development at a future date; and/or (iii) receive information on the same or related subject matter from third parties; and (iv) as a result of such activities, develop and commercialize such concepts, products or technologies independently or in cooperation with third parties .
- (n) This Agreement shall be binding upon the assigns and successors of each party. Neither party may, however, assign any of its rights or obligations hereunder without the prior written consent of the other party, except that Company may, without Recipient's approval, assign all or part of its rights and obligations herewith to an affiliated entity or to a non-affiliated entity in connection with the sale of the business related to this Agreement.

IN WITNESS WHEREOF, duly-authorized representatives of the Parties have signed as of the Effective Date.

COMPANY

By: _____

Printed Name:

Title:

Date: _____

RECIPIENT

By: _____

Printed Name:

Title:

Date: _____