

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure by and between Andersen Scientific, Inc., a North Carolina based corporation, and

Address: \_\_\_\_\_

(Collectively, the "Parties") is entered into as of \_\_\_\_\_

WHEREAS The Parties are providers of products and services to the Medical Device Industry and wish to establish a cooperative relationship involving arrangements as defined herein; and

WHEREAS, the contemplated arrangements will involve confidential and proprietary information developed or owned by a party (the "Discloser") and/or Discloser's Clients, which may be disclosed to, or become known by, the other party (the "Recipient") and its officers, employees, agents.

WHEREAS, the Discloser desires to protect the proprietary and confidential nature of such information;

NOW, THEREFORE, in order to facilitate the arrangement and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

### I Confidentiality and Non-Disclosure

1. The term "Confidential Information" means all information disclosed to the Recipient by the Discloser or its agents or employees in any manner, whether orally, visually or in tangible form (including, without limitation, documents, devices and computer readable media), and all copies thereof, whether created by the Discloser or the Recipient, relating to financial operations, strategic plans and market information of the Discloser. The term Confidential Information also includes business and management methods, technology, know-how, trade secrets, instruction manuals, business and product plans, market information and analysis, financial and operational controls and procedures, client identity and information, customer lists and all other information developed and used by the Discloser in its business and operations (as conducted and as proposed to be conducted), which has not been publicly disclosed by the Discloser.
2. Notwithstanding the foregoing, nothing will be considered "Confidential or Proprietary Information" of the Disclosing Party unless either (1) it is first disclosed in tangible form and is conspicuously marked "Confidential," "Proprietary" or the like or (2) it is first disclosed in non-tangible form and orally identified as confidential at the time of disclosure and is summarized in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure.
3. Except as expressly permitted herein, the Recipient shall not disclose any Confidential Information and shall prevent the disclosure of any Confidential Information by its employees, agents and independent contractors.
4. The Recipient shall use all Confidential Information solely for the purpose of facilitating the cooperative relationship between the Parties and the arrangement defined herein (the "Permitted Purpose")
5. The Recipient shall disclose Confidential Information only to those of its employees, agents and independent contractors who need to know such Confidential Information for the Permitted Purpose. The Recipient shall require all of its employees, agents and independent contractors who have access to any Confidential Information to agree to limit their use of such Confidential Information to the Permitted Purpose.

6. Recipient may make such disclosure as may be required if it has received the written opinion of its outside counsel that the disclosures must be made by the Recipient so that the Recipient does not commit a violation of law.
7. Confidential Information shall not include any information that the Recipient can demonstrate:
  - a. was in the Recipient's possession prior to disclosure by the Discloser hereunder;
  - b. was generally known, in the trade or business practiced by the Discloser, at the time of disclosure to the Recipient hereunder, or becomes so generally known after such disclosure, through no act of the Recipient or its employees, agents or independent contractors;
  - c. has come into the possession of the Recipient from a third party who is under no obligation to the Discloser to maintain the confidentiality of such information; or
  - d. was developed by the Recipient independently of, and without reference to, any Confidential Information or any information that the Discloser has disclosed in confidence to any third party.
8. If a particular portion or aspect of Confidential Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the provisions of this Agreement.
9. In the event that the Recipient is ordered to disclose Confidential Information pursuant to a judicial or governmental request, requirement or order, the Recipient shall immediately notify the Discloser and take reasonable steps to assist the Discloser in contesting such request, requirement or order or otherwise protecting the Discloser's rights.

## **II Term & Termination**

1. This Agreement shall remain in full force and effect for a period of one year from the date hereof, whereupon it shall expire, unless terminated earlier by either party.
2. Either party may terminate this agreement without cause upon 7 days written notice to the other party.
3. The Confidentiality and Non-disclosure provisions of this agreement shall continue in effect for period of 3 years following its termination or expiration.

## **III. Limited Purpose**








1. This Agreement does not grant to the Receiving Party any rights, by license or otherwise, to any of the Disclosing Party's Confidential Information except as expressly set forth in this Agreement. All Confidential Information shall remain the property of the Disclosing Party.
2. The receipt of information pursuant to this Agreement will not preclude, or in any way limit, the Receiving Party from: (i) providing to others products or services which may be competitive with products or services of the Disclosing Party; (ii) providing products or services to others who compete with the Disclosing Party; or (iii) assigning its employees in any way it may choose; provided, however that the actions described in (i)-(iii) above do not use any of Disclosing Party's Confidential Information.

- Neither this Agreement nor the disclosure or receipt of Confidential Information shall obligate either party to enter into any subsequent agreements with the other, including entering into and consummating the Business Purpose.

#### IV. Miscellaneous

- This Agreement and all actions related hereto shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the United States and the State of North Carolina.
- The Parties shall endeavor to settle any dispute concerning this Agreement by mediation under the Center for Public Resources Model Procedure for Mediation of Business Disputes. Any dispute concerning this Agreement which has not been resolved by mediation within sixty (60) days of its initiation shall be settled by arbitration in the forum of the non-moving party, and pursuant to the American Arbitration Association Commercial Arbitration Rules by a sole arbitrator.
- This Agreement expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, commitments and understandings, whether written or oral, with respect to such subject matter. Any modifications of, or changes to, this Agreement shall be in writing and signed by each of the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below:

|   |   |                           |
|---|---|---------------------------|
| _____   |   | Andersen Scientific, Inc. |
| _____   |  | _____                     |
|  Signature    |  | Signature                 |
|  Name & Title |  | Name & Title              |
|  Date         |  | Date                      |