

## MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the “**Agreement**”), dated and effective as of April 16, 2020, is by and between (Company Name), a (State) Corporation, and AMS Micromedical, LLC a Wisconsin Corporation.

WHEREAS, the Discloser and Recipient intend to discuss a potential business arrangement between them; and

WHEREAS, in connection with such discussions, the Discloser may find it necessary or desirable to disclose to Recipient and Recipient’s employees, agents or representatives certain Confidential Information (as defined below).

NOW, THEREFORE, in consideration of the promises contained herein, and as a material inducement to the Discloser to disclose such information, Recipient agrees as follows:

1. Confidential Information. “**Confidential Information**” means all tangible and intangible information, including, without limitation, technical, financial, commercial and proprietary information, know-how, and trade secrets of any description, whether created or produced by the Discloser, or by any person on behalf of the Discloser, that concerns or relates to the business or technology of the Discloser, or is otherwise acquired in anticipation of, during, or as a result of, or in any way connected with, this Agreement, regardless of whether such Confidential Information is marked as “confidential.” Notwithstanding the foregoing, “Confidential Information” shall not include information which:

- (a) at the time of disclosure to Recipient is, or thereafter becomes, known to the public through legal means and no fault of Recipient or Recipient’s employees, agents or representatives;
- (b) can be demonstrated by Recipient to have been in its lawful possession prior to the disclosure to Recipient, as shown by written records in existence prior to such disclosure;
- (c) is hereafter lawfully disclosed to Recipient by a person under no obligation of confidentiality to the Discloser with respect to such information; or
- (d) is hereafter independently developed by Recipient’s employees without access to the Confidential Information, as shown by written records maintained contemporaneously with such development.

Recipient shall have the burden of demonstrating that information which would otherwise constitute Confidential Information is within the scope of the previous sentence. Failure to mark or designate any Confidential Information as confidential or proprietary shall not affect its status as Confidential Information under this Agreement.

2. Trade Secret. “**Trade Secret**” means a formula, process, device, or other business

information that is kept confidential to maintain an advantage over competitors – including a formula, pattern, compilation, program, device, method, technique, or process – that: (i) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (ii) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy. Under this Agreement, Trade Secret material shall be marked as such. If Trade Secret material is not marked, it will be considered Confidential Information.

3. **Permitted Use.** Recipient will use the Confidential Information solely for purposes of: (i) evaluating a potential business arrangement between the Discloser and Recipient; and (ii) pursuing such business arrangement after the parties have agreed to do so; but not for any other purposes.

4. **Confidentiality.** Recipient will hold the Confidential Information in strict trust and confidence and will take all steps necessary to prevent the unauthorized disclosure, reproduction or use of any Confidential Information by Recipient, Recipient's employees, agents and representatives. Without the Discloser's prior written authorization, Recipient will not, and will not permit Recipient's employees, agents or representatives to:

- (a) disclose or otherwise make available any Confidential Information to any persons other than Recipient's employees, agents or representatives who have a need to use such Confidential Information for purposes expressly permitted by this Agreement;
- (b) copy, recreate or otherwise reproduce any Confidential Information in whole or in part, except as necessary to use such Confidential Information for purposes expressly permitted by Section 3 hereof; or
- (c) use any Confidential Information for any purposes not expressly permitted by this Agreement.

Notwithstanding the foregoing, disclosure of Confidential Information shall not be prohibited to the extent such disclosure is required by law, provided that: (i) Recipient has given the Discloser prompt written notice of such disclosure prior thereto and has taken all available steps to maintain the confidentiality of the information disclosed; and (ii) the Discloser has been afforded a reasonable opportunity to contest the necessity and scope of such disclosure.

5. **Term.** Recipient has a duty to not disclose or make otherwise available any Confidential Information for the shorter of two years or authorization of disclosure by the Discloser, with the exception of the Discloser's Trade Secrets. Recipient has an ongoing duty to not disclose or make otherwise available any of the Discloser's trade secrets until authorized by the Discloser to do so.

6. **Return of Materials.** Upon the Discloser's request, Recipient will promptly deliver to the Discloser: (a) all materials, whether or not containing Confidential Information, furnished by the Discloser to Recipient (including, without limitation, business plans, marketing plans and product samples, designs, drawings, and specifications) and all copies, notes, summaries, abstracts,

drawings, sketches, reproductions, models and other materials produced from such materials or from Confidential Information; and (b) all materials containing Confidential Information which are in the possession or under the control of Recipient. Recipient's obligations under this Agreement will survive compliance with any such request.

7. Injunctive Relief. Recipient acknowledges that the Confidential Information constitutes and contains confidential and proprietary information of a special and unique nature and value. Recipient also acknowledges that the Discloser will suffer irreparable harm in the event Recipient breaches any of Recipient's obligations under this Agreement and that monetary damages will be inadequate to compensate the Discloser fully for such breach. Accordingly, Recipient agrees that, in the event of a breach or threatened breach of any of Recipient's obligations under this Agreement, the Discloser will be entitled to injunctive relief to prevent such breach by Recipient and by all persons acting for, on behalf of or with Recipient. Such injunctive relief will be in addition to any other rights and remedies to which the Discloser is or may be entitled at law or in equity or otherwise under this Agreement.

8. Accounting. Recipient agrees that, in the event of a breach of any of Recipient's obligations under this Agreement, the Discloser will be entitled to an accounting and repayment of all profits, compensation, royalties, commissions, remunerations or other benefits which Recipient realizes in connection with such breach. Such remedy will be in addition to any other rights and remedies to which the Discloser is or may be entitled at law or in equity or otherwise under this Agreement.

9. Scope of Obligations. Nothing in this Agreement shall be construed to obligate either party to negotiate or enter into any business arrangement with the other party or any other person or to obligate the Discloser to disclose or otherwise make available any information to Recipient.

10. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the remaining provisions.

11. Binding Effect; Benefits. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. As used in this Agreement, the term "Discloser" shall also include any affiliate of the Discloser.

12. Governing Law. The construction and interpretation of this Agreement and the rights of the parties with respect to its subject matter shall be governed by the substantive laws of the State of Wisconsin. Recipient expressly consents to the jurisdiction of courts located within the State of Wisconsin.

13. Entire Agreement; Modification and Waiver. This Agreement contains the entire agreement of the parties with respect to its subject matter and no modification or waiver of the provisions hereof will be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced. No waiver of any provision of this Agreement at any time will preclude enforcement of such provision at any other time or of any other provision

of this Agreement.

14. **Notices.** All notices and other communications under this Agreement shall be deemed to have been duly given if delivered or sent by certified mail, postage prepaid, and addressed, in the case of the Recipient, to the address indicated below and, in the case of the Discloser, to 313 Price Place, Suite #13, Madison, WI 53705 or to such other address as a party designates by written notice to the other.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

AMS Micromedical, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address:

711 Spartan Drive

Sparta, WI 54656

By: \_\_\_\_\_

Its: \_\_\_\_\_