



## MUTUAL CONFIDENTIALITY AGREEMENT

Between

**VASCULAR FLOW TECHNOLOGIES LIMITED**, (No. SC190078) of Prospect Business Centre, Gemini Crescent, Dundee, DD2 1TY (**VFT**);

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONSIDERING THAT:

1. Vascular Flow technologies Ltd and ..... have been or may be engaged in discussions; and
2. As a result of the said discussions, Confidential Information (as defined in the Schedule annexed) may have been or will be exchanged;

Accordingly, both parties hereby agree and confirm that (subject to the terms of the Schedule annexed) they shall at all times preserve the confidentiality of the Confidential Information and that they will observe and be bound by the Standard Terms and Conditions specified and contained in the Schedule annexed to and forming part of this Agreement.

**SIGNED FOR AND ON BEHALF OF VASCULAR FLOW TECHNOLOGIES LIMITED by**

Full Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Witness**

Full Name: \_\_\_\_\_

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

**SIGNED FOR AND ON BEHALF OF \_\_\_\_\_ by**

Full Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** Parties also to initial each pages and sign at foot of schedule

**THIS IS THE SCHEDULE OF STANDARD TERMS AND CONDITIONS REFERRED TO IN THE FOREGOING CONFIDENTIALITY AGREEMENT**

**1. Interpretation**

For the purposes of this Agreement:-

- 1.1 the term "Confidential Information" means any and all information and know-how that is now or at any time hereafter in the possession of one party and which may be disclosed to the other party by any means (whether orally, in writing, digitally or otherwise) or information of the Discloser which the other party may have access to or become aware of including without limitation, trade secrets, financial information, financial projections, products and product information, marketing information, intellectual property, data, know-how, formulae, processes, designs, models, photographs, drawings, specifications, software programs and samples and any other such material in any medium which is designated orally or in writing by the Discloser as being confidential or which may reasonably be considered to be commercially sensitive;
- 1.2 the party to whom Confidential Information is disclosed shall be referred to as "the Obligant";
- 1.3 the party by whom Confidential Information is disclosed or from whom the Confidential Information originates shall be referred to as "the Discloser";
- 1.4 "Authorised Persons" means the officers, employees, contractors, consultants, agents, students and advisers of the Obligant who need to know the relevant Confidential Information for the Purpose, together with any other person approved in writing by the Discloser;
- 1.5 "Intellectual Property Rights" means any intellectual and industrial property rights including any discovery, development, invention, patent, improvement, design, process, formulae, method, database, information, drawing, code, computer program, copyright work (present and future), semiconductor or other topography, trade mark or trade name or get-up and all similar rights, wherever existing and whether registered or not (and including all applications to protect any such rights and any renewals or extensions thereof); and
- 1.6 "Purpose" means the purpose of considering whether to enter into a collaborative agreement or relationship with the Discloser, and the purpose of undertaking work in implementation of such collaboration.

**2. Undertakings of the Obligant**

- 2.1 In consideration of the disclosure of Confidential Information each party hereby undertakes to the other that (subject to Clauses 2.2 and 3) it will:
  - 2.1.1 maintain in strict confidence the Confidential Information and not publish or disclose nor in any way directly or indirectly permit or suffer the disclosure of the existence, source, content or substance of the Confidential Information without the prior written consent of the other;
  - 2.1.2 use the Confidential Information solely for the Purpose;
  - 2.1.3 treat the Confidential Information with reasonable care and take appropriate security steps (which are no less stringent than those taken to protect its own confidential information) to ensure that the Confidential Information is secure from unauthorised access;
  - 2.1.4 immediately inform the Discloser if the Obligant becomes aware of any apparent unauthorised access to the Confidential Information;
  - 2.1.5 not at any time without the prior written consent of the Discloser take, make or retain any copies, reproductions or facsimiles of any of the Confidential Information in any form of media or materials except to the extent strictly necessary for the Purpose; and
  - 2.1.6 not use, rely upon or duplicate or in any way profit from or take advantage of in any manner the Confidential Information for any purpose other than the Purpose without the prior written consent of the other.
- 2.2 The parties acknowledge that, particularly with regard to academic collaborations, it may be appropriate for the Obligant or associates of the Obligant to present or discuss work undertaken in relation to, or arising from, the Purpose in seminars, tutorials and lectures organised by or on behalf of the Obligant and/or to publish certain information arising from work undertaken by them in connection with the Purpose. The Obligant will submit to the Discloser in writing details of any work or information which the Obligant (or any of its employees or students) wishes to publish, present or discuss and shall not publish, present or discuss the information until written approval is received from the Discloser. The Discloser may (upon giving written notice to the Obligant) require the Obligant to refrain from publishing, presenting or discussing the relevant work or information (if the Discloser reasonably considers that doing so may result in unauthorised disclosure of its Confidential Information or may otherwise harm its commercial interests) or to delay the proposed

publication, presentation or discussion for such period as may be specified by the Discloser if, in the Discloser's reasonable opinion, that delay is necessary in order to seek patent or similar protection for the relevant information. If no response is received from the Discloser during the proposed publication, presentation or discussion shall not be permitted unless and until the Discloser has confirmed its written consent thereto.

### **3. Exceptions**

- 3.1 Notwithstanding Clause 2 above, the Obligant may disclose any Confidential Information which is:
- 3.1.1 at the time of disclosure known to the Obligant (other than under any obligation of confidentiality to the Discloser) and documentary evidence of such knowledge is provided by the Obligant to the Discloser within one calendar month of disclosure;
  - 3.1.2 publicly available in general circulation otherwise than as a result of a breach of this Agreement or of any other obligation of confidentiality to the Discloser;
  - 3.1.3 developed independently by the Obligant (without use of, or access to, the Confidential Information) provided that the Obligant can demonstrate the independence of the same development; or
  - 3.1.4 required to be disclosed by the Obligant to comply with applicable laws or the rules of any court, government body or other body of competent jurisdiction; provided that the Obligant provides (to the extent legally possible) prior written notice of such disclosure to the Discloser and takes reasonable and lawful actions to avoid and/or minimise the extent of such disclosure. If the Obligant is not permitted so to notify the Discloser before such disclosure is made, it shall (to the extent permitted) notify the Discloser immediately afterwards.
- 3.2 Without prejudice to the foregoing, if any of the Confidential Information is received by the Obligant from a third party, then the Obligant shall inform the Discloser at once and shall maintain such information upon the terms of this Agreement.
- 3.3 The Obligant may disclose any of the Confidential Information to any of its Authorised Persons, provided that it informs them beforehand of the duties of confidence under this Agreement, ensures that they undertake to the Obligant to comply with the same duties of confidence, and procures that they shall comply with such duties (on the basis that the Obligant shall be responsible for any failure to so comply).
- 3.4 Without prejudice to the generality of Clause 3.1.2 above, information shall not be deemed to be publicly available by reason only that it is known to only a few of those people to whom it might be of commercial interest, and a combination of one or more portions of the Confidential Information shall not be deemed to be publicly available by reason only of each separate portion being so available.

### **4. Confidentiality Measures**

- 4.1 To secure the confidentiality attaching to the Confidential Information, the Obligant shall:
- 4.1.1 keep separate all Confidential Information and all information generated by the Obligant based thereon from all documents and other records of the Obligant;
  - 4.1.2 not use, reproduce, transform or store any of the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business with the exception of data stored on the Obligant's secure server to which secure access is provided to its Authorised Persons;
  - 4.1.3 on request of the Discloser made at any time, shall deliver up to them or (at the Discloser's option) destroy all documents and other material (including all copies and reproductions) in the possession, custody or control of the Obligant that bear or incorporate any part of the Confidential Information and shall (if so requested by the Discloser) make (and procure that its Authorised Persons make) no further use of the Confidential Information.
- 4.2 Where the Obligant is a member of a group, the Obligant shall not disclose Confidential Information to any other member (a "Group Company") of that corporate group without the prior written consent of the Discloser, which consent shall not be unreasonably withheld provided that the Discloser shall be entitled to require that such Group Company enter into an agreement with the Discloser on substantially the same terms as this Agreement prior to such disclosure.

## 5. **Intellectual Property**

5.1 The Obligant acknowledges that:

5.1.1 all Confidential Information is and shall remain the property of the Discloser and/or its licensors;

5.1.2 in no event shall the Obligant be deemed to have acquired any right, title or interest (whether by conveyance, assignment, licence or otherwise) in or to the Confidential Information or related information, technology or products possessed by the Discloser by virtue of this Agreement or any disclosure made hereunder; and

5.1.3 its obligations under this Agreement shall be continuing.

5.2 Notwithstanding the provisions of Clause 5.1 (above), the Obligant shall be entitled to use the Confidential Information solely for the fulfilment of the Purpose.

## 6. **Indemnity**

The Obligant shall indemnify and keep indemnified the Discloser from and against (and shall pay to the Discloser on demand) all claims, actions, losses, fines, penalties, damages, costs and expenses which may be brought against or incurred or suffered by the Discloser arising from or in connection with any breach of this Agreement by the Obligant or the unauthorised disclosure or use of the Confidential Information by the Obligant or any of its Authorised Persons.

## 7. **No Obligation**

Nothing contained in this Agreement shall in any way oblige either party to proceed with any negotiation or transaction or to establish any business relationship, whether expressly contemplated by this Agreement or otherwise.

## 8. **Warranties/Limitations on Discloser's Liability**

8.1 The Discloser warrants to the Obligant that it has sufficient rights in the Confidential Information to grant the Obligant the rights granted hereunder.

8.2 Save as provided in Clause 8.1, no warranty is given by the Discloser concerning the accuracy, efficacy or completeness of the Confidential Information disclosed by it (or of any materials or media by which it is supplied), except to the extent, if any, expressly agreed by the Discloser in writing. No representation or warranty is made that the Confidential Information shall remain unchanged. There is no obligation on the part of the Discloser to update or correct any inaccuracies in any Confidential Information.

8.3 The Discloser will not be liable for any indirect, special, incidental or consequential damages arising out of the Obligant's use of any of the Confidential Information disclosed under this Agreement (including but not limited to lost profits) even if the Discloser has knowledge of the possibility of such damages.

## 9. **Assignment**

9.1 Neither party shall be entitled to assign or transfer or sub-contract their rights or obligations under this Agreement (in whole or in part) without obtaining the prior written consent of the other party.

## 10. **Confidentiality of This Agreement**

10.1 The Obligant agrees to keep the existence of this Agreement confidential and not to make any public announcement in relation to, or public comment on, this Agreement without the written consent of the Discloser.

## 11. **General**

11.1 This Agreement supersedes all prior agreements, written or oral, between the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. Nothing in this Agreement purports to limit or exclude any liability for fraud.

11.2 This Agreement may not be varied, in whole or in part, other than by agreement in writing between the parties.

- 11.3 No failure, delay or omission by any party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 11.4 This Agreement shall be binding on and shall enure to the benefit of the parties and their respective successors and assignees.
- 11.5 If any provision of this Agreement is or becomes illegal, invalid or unenforceable, that shall not affect the legality, validity and enforceability of the remaining terms of this Agreement.
- 11.6 The provisions of this Agreement are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. The Obligant agrees that any breach of this Agreement may cause the Discloser substantial damage and therefore damages alone shall not be sufficient to remedy any breach of this Agreement and the Discloser shall be entitled to seek interdict and/or specific implement and any other remedy for breach available to it.
- 11.7 Any notice to be served by one party to the other under this Agreement shall be delivered by hand or sent by first class recorded delivery post to the address set out herein (or such other address as notified in writing from time to time) and shall be deemed delivered upon receipt (if delivered by hand) and on the second business day after posting (if delivered by post).
- 11.8 This Agreement may be signed in any number of counterparts each of which when signed and dated shall be an original and such counterparts taken together shall constitute one and the same agreement.
- 11.9 The construction, validity and performance of this Agreement shall be governed by the law of Scotland and the parties' consent to registration hereof for preservation and execution and hereby submit to the exclusive jurisdiction of the Scottish courts.

**SIGNED FOR AND ON BEHALF OF VASCULAR FLOW TECHNOLOGIES LIMITED by**

Full Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED FOR AND ON BEHALF OF \_\_\_\_\_ by**

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