

## MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 201\_\_, and is entered into by \_\_\_\_\_, and Mercury Enterprises, Inc., d/b/a Mercury Medical (herein "Party" or "Parties") with reference to the following:

- A. The Parties desire to discuss a prospective business relationship.
- B. In such discussions, each Party may disclose to the other certain confidential information (the disclosing Party is referred to herein as the "Discloser" and the Party receiving such confidential information is referred to herein as the "Recipient").
- C. The Parties hereto understand that each may now market or have under development products and/or services which are competitive with products or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, discussions and/or communications between the Parties hereto will not serve to impair the right of either Party to develop, make, use, procure, protect and/or market products or services now or in the future which may be competitive with those offered by the other, nor require either Party to disclose any planning or other information to the other.
- D. Although this Agreement is not intended to, and will not prevent the Parties from competing with each other, the Parties will not use Confidential Information to facilitate, sponsor or otherwise effect any such competition now or in the future.

Accordingly, the Parties to this Agreement agree as follows:

### 1. **CONFIDENTIALITY.**

1.1 **Definition of "Confidential Information"**. As used in this Agreement, "Confidential Information" means all information that is marked or otherwise identified as confidential, and that is received by Recipient from Discloser or any of Discloser's affiliates, or any of Discloser's attorneys or other agents, in whatever form transmitted, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), relating to Discloser's operations, business, affairs or property, including, without limitation, technologies, research and development, business plans, trade secrets, and systems. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure.

1.2 **Strict Confidence.** Recipient shall maintain all Confidential Information in strict confidence, shall not disclose Confidential Information to any third party, and shall protect all Confidential Information with not less than the same degree of care as Recipient normally uses in the protection of Recipient's own confidential or proprietary information, but at least with reasonable care. Recipient shall use Confidential Information only for the purpose of evaluating the prospective business relationship, or to carry out Recipient's obligations in the business relationship.

1.3 **Permitted Disclosure.** The prohibitions against disclosure of Confidential Information set forth in this Agreement shall not apply to: (a) Confidential Information that was already known to Recipient at the time Recipient received the Confidential Information from Discloser, so long as Recipient's initial receipt of that Confidential Information is evidenced by documents in Recipient's possession; (b) Confidential Information that was disclosed to Recipient by a third party having the lawful right to disclose that Confidential Information; (c) Confidential Information that had been available to the public at the time Recipient received that Confidential Information, or subsequently lawfully became available to the public otherwise than by a breach of this Agreement; and (d) Confidential Information that Recipient was required to disclose pursuant to judicial action or decree having jurisdiction over Recipient, or pursuant to any requirement of any governmental agency or authority having jurisdiction over Recipient, but only so long as, prior to making the disclosure, Recipient gives Discloser written notice of the

requirement that Recipient disclose the Confidential Information and provide Discloser with the opportunity to challenge that requirement.

2. **RETURN OF INFORMATION.** Immediately upon request by Discloser, Recipient shall deliver to Discloser all manifestations of the Confidential Information, including all copies and extracts thereof.

3. **NO LICENSE.** This Agreement shall not be construed to grant any rights to Recipient under any patent, copyright or other intellectual property of Discloser, other than for the use expressly provided herein.

4. **RIGHT TO WITHDRAW.** Until definitive agreements are mutually executed binding the Parties to proceed with a business relationship, there shall be no binding relationship between the Parties nor shall either Party have any expectation of a binding relationship, apart from the explicit terms of this Agreement. Either Party may at any time withdraw from and terminate the discussions regarding the prospective relationship without liability.

5. **MISCELLANEOUS.** This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the Parties hereto. This Agreement contains the entire agreement among the Parties hereto with respect to the subject matter herein and supersedes all prior agreements or understandings among the Parties with respect thereto. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Florida law, without regard to conflicts or choice of law principles, shall govern the interpretation of this Agreement. Discloser may assign this Agreement. The prevailing Party in any action brought to enforce this Agreement shall be entitled to recovery from the non-prevailing Party of reasonable expenses, including attorneys' fees, that the prevailing Party may incur in such action.

6. **EQUITABLE RELIEF.** Recipient acknowledges that any disclosure or unauthorized use of the Confidential Information will cause harm to Discloser that will be substantial and for which damages would not be a full and adequate remedy. In the event of such breach, and in addition to all other remedies, Discloser shall have the right to injunctive relief, without the necessity of posting any bond or other security.

7. **TERM.** The term of this Agreement shall be three years from the date of execution.

8. **NO WARRANTY.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed as of the date first written above.

\_\_\_\_\_

**Mercury Medical**

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

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

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

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