**MUTUAL CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** (hereinafter “Agreement”) effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021, **BY AND BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; hereinafter referred to as “Company”; **AND** **Confluent Medical Technologies, Inc.**, a Delaware corporation,having offices at 6263 N Scottsdale Road, Suite 224, Scottsdale, AZ 85250, United States of America, together with its affiliates and subsidiaries hereinafter referred to as “Confluent Medical”;

**WHEREAS** Company is the owner of certain confidential and proprietary information, including know-how, trade secrets, data, designs, formulas, materials, technical, financial, business and commercial information (“Confidential Information”) relating to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**Whereas** Confluent Medical is the owner of certain Confidential Information relating to Confluent Medical’s business, including design and manufacturing of medical devices and components parts therefore, nitinol processing, balloon manufacturing, extrusions, medical textiles, precision plastics, and the research, development, design, manufacturing, and marketing thereof;

**Whereas** each party is willing to disclose certain Confidential Information, only under the terms and conditions hereof and for the purpose of evaluating their interest in entering into a business relationship and for no other purpose.

**THEREFORE**, **IT HAS BEEN AGREED AS FOLLOWS**:

# Article 1. Nondisclosure

1. The receiving party agrees to keep confidential and not to disclose (or allow any member of its evaluation team to disclose) any of the disclosing party’s Confidential Information, other than to members of the receiving party’s evaluation team, which may include employees, agents, consultants, legal and financial representatives who need to know such Confidential Information in connection with the purpose hereof and who are subject to written obligations of confidentiality no less restrictive than those contained herein, and only after informing each member of the evaluation team of the terms and conditions of this Agreement.
2. The receiving party agrees that it will not, without the disclosing party’s prior written consent, use any of the disclosing party’s Confidential Information for any purpose other than evaluating, or undertaking, a possible business relationship with the disclosing party.

# Article 2. Confidential Information

1. The disclosing party agrees to clearly mark all written information it deems Confidential Information as “confidential” or, if communicated orally, visually, or by any other method, to confirm the confidential nature of such in a writing clearly marked “confidential,” within thirty (30) days of disclosure. However, failure to mark any information in accordance with the foregoing will not render such information non-confidential if a reasonable person would understand, from the nature of the information or the manner of disclosure, that such information was intended by the disclosing party to be Confidential Information.
2. Notwithstanding the foregoing, the obligations specified herein shall not apply to any information clearly demonstrated to fall within the following categories:
   1. information that is or becomes publicly known or available other than through unauthorized disclosure by the receiving party; or
   2. information that the receiving party can demonstrate was in its possession at the time of receipt and was not acquired, directly or indirectly, from the disclosing party, unless previously disclosed on a non-confidential basis; or
   3. information the receiving party received in good faith from a third party who is not under a similar restriction of confidentiality to the disclosing party, and who has a right to disclose the information; or
   4. information that is required by law to be disclosed, but only to the extent of such required disclosure, and provided that disclosure pursuant to this subsection shall not occur until receiving party has complied with the terms of Article 3 below; or
   5. information that can be proven to have been independently developed by the receiving party, after disclosure hereunder, without the aid, application or use in any way of Confidential Information received from the disclosing party, as evidenced by the receiving party’s written records.
3. Nothing herein shall obligate either party to disclose any particular Confidential Information. The parties understand and agree that the disclosure of Confidential Information shall not result in any obligation on the part of either party to enter into any future agreement or business relationship.

**Article 3. Compliance with Laws**

If receiving party becomes legally compelled, by law, rule, regulation or subpoena, to disclose any Confidential Information received from the disclosing party, the receiving party shall use reasonable efforts to provide the disclosing party with prompt notice of such requirement or advice prior to disclosure so the disclosing party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the receiving party agrees to furnish only that portion of the Confidential Information it is legally required to so furnish and, at the request and expense of the disclosing party, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Provided that the receiving party has complied with the foregoing terms, the receiving party’s disclosure of Confidential Information as required by law, rule, regulation or subpoena shall not be a breach hereof.

**Article 4. Return or Destruction of Confidential Information**

At any time, at the disclosing party’s request, the receiving party shall return all Confidential Information provided by the disclosing party pursuant to this Agreement, as well as all copies, notes, abstracts and records made thereof, except that the receiving party may retain one set of materials for archival purposes only. The return of this material shall not, however, affect the receiving party’s obligations to treat such retained Confidential Information in accordance with the terms and conditions of this Agreement.

# Article 5. Publicity

The parties agree that, without prior written consent of the other party, neither party shall refer to the other party or attribute any information to the other party in any external communication for any purpose, including without limitation in press releases, web sites, offering memoranda, and conversations with analysts.

# Article 6. Non-Exclusivity and Termination

1. Nothing herein requires either party to proceed with any proposed transaction or relationship.
2. Each party acknowledges and agrees that the other party may have entered, and may continue to enter, into discussions with third parties concerning matters similar to the discussions hereunder, provided that nothing in this sentence shall limit the obligations of the parties under this Agreement.

# Article 7. General Clauses

1. Either party may terminate the discussions hereunder at any time by written notice to the other party at the address provided above. Notices to Confluent Medical Technologies, Inc. shall be copied to: Confluent Medical Technologies, Inc., Attn: Legal Department, 47533 Westinghouse Drive, Fremont, CA 94539. The terms and conditions of this Agreement and the obligations of each party herein not to use and not to disclose or disseminate any of the disclosing party’s Confidential Information will continue for a period of five (5) years from the date of termination hereof.
2. Nothing in this Agreement shall be deemed to constitute any party a partner, joint venture, employer, employee, master, servant, principal, or agent of any other party or other person.
3. The parties agree that their obligations set out herein may not be changed, modified, released, discharged, abandoned or otherwise terminated in whole or in part except by a written instrument signed by each party.
4. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions shall not affect the validity and enforceability of the other provisions hereof.
5. The parties hereby understand and agree that no right, license, proprietary right or interest in any of the disclosing party’s Confidential Information or any of the products embodying the same shall be granted or construed to be granted to the receiving party by the terms and conditions of this Agreement.
6. This Agreement states the entire agreement and understanding of the parties on the subject matter of this Agreement and supersedes all previous agreements, arrangements, communications, and understandings relating to the subject matter hereof.
7. The validity and construction of this Agreement shall be governed by the State of Delaware. The prevailing party in any dispute hereunder shall be entitled to recover its legal fees and costs, including but not limited to attorneys’ fees, incurred in the enforcement of the terms hereof, and the other party shall pay any such fees and costs within thirty (30) days of entry of a final judgment.

**IN WITNESS WHEREOF**, Company and Confluent Medical have duly executed this Agreement as of the day and year set forth above.

**Company Confluent Medical Technologies, inc.**

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_