

# CONFIDENTIALITY AGREEMENT

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**BETWEEN** the party described in item 1 of the Schedule (**Recipient**)

**AND** Saluda Medical Pty Limited ACN 145 902 272 of Level 1, 407 Pacific Highway Artarmon, NSW 2064 (**Discloser**)

## INTRODUCTION

- A. The Discloser has agreed to provide to the Recipient certain Confidential Information for the Purpose, subject to the terms of this agreement.
- B. The Recipient has agreed to receive that Confidential Information subject to the terms of this agreement.

the Discloser or any of its Affiliates disclosed or supplied by or on behalf of the Discloser or any of its Affiliates to the Recipient, whether orally, visually or in documentary or electronic form; and

- (c) any notes, records or copies made by the Recipient or any of its Affiliates of the information referred to in paragraph (b) or (c) of this definition,

## IT IS AGREED:

### 1. Interpretation

In this agreement, unless the contrary intention appears:

**Affiliate** means any person, corporation or other entity directly or indirectly controlled by, controlling, or under common control with a party or its parent corporation. A person, corporation or other entity shall be deemed to control another person, corporation or entity if it owns, directly or indirectly, more than fifty percent (50%) of the voting shares or other interest, or has the power, to elect more than half the directors, or to otherwise direct or cause the direction of the management and policies of such party, whether through the ownership of voting securities, by contract or otherwise;

**Confidential Information** means:

- (a) all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, proprietary technology and techniques and all related information of the Discloser or any of its Affiliates, disclosed or supplied by or on behalf of the Discloser or any of its Affiliates to the Recipient or any of its Affiliates, whether orally, visually or in documentary or electronic form;
- (b) commercial, business, technical and proprietary information, information regarding products and related documents, manuals, data, research and development plans, product and business plans, strategies, historical financial results, budgets, forecasts, projections and other financial data, of

but excludes information that:

- (d) is either in the public domain or comes into the public domain (otherwise than as a result of breach of this agreement by the Recipient or a breach of confidence by any other person);
- (e) is independently created by the Recipient or by its employees, contractors, consultants, agents or professional advisors who did not have access to the Confidential Information and without any reference to the Confidential Information;
- (f) is rightfully known by the Recipient in advance of the disclosure, as evidenced by the Recipient's written record.

**Purpose** means the purpose described in item 2 of the schedule.

### 2. Disclosure and Use of Confidential Information

In consideration of the Discloser disclosing Confidential Information to the Recipient, the Recipient agrees that:

- (a) they will use the Confidential Information exclusively in connection with the Purpose, and for no other purpose;
- (b) they will keep all Confidential Information in confidence and will only permit such Affiliates and any of their employees and consultants to

become aware of the Confidential Information:

- (i) as require the Confidential Information for the purposes of carrying out their duties in connection with the Purpose;
  - (ii) who are aware of the Recipient's obligations under this agreement; and
  - (iii) who are legally bound to obligations no less onerous than those set out in this agreement;
- (c) they will not use or disclose, or permit its Affiliates or any of their employees and consultants to use or disclose the Confidential Information, or any portion of the Confidential Information for any purpose except:
- (i) in connection with their involvement with the Purpose, and who are legally bound to obligations no less onerous than those set out in this agreement; or
  - (ii) as required by statute or law.

The receiving party shall be liable for unauthorized disclosure or use of the Discloser's Confidential Information by the Recipient's Affiliates, and any of their employees and professional advisers.

Notwithstanding the foregoing, the Recipient is permitted to disclose Confidential Information if required to be disclosed by statute or law provided that the Recipient:

- (d) gives the Discloser prompt written notice of any impending compelled disclosure;
- (e) provides reasonable assistance to the Discloser in opposing the compelled disclosure; and
- (f) makes only such disclosure as is compelled.

### **3. Security and Control**

The Recipient must:

- (a) establish and maintain all necessary security measures to maintain the confidential nature of the Confidential Information, at all times utilising no less than the same degree of care that the Recipient uses to protect its

own confidential and proprietary information of similar importance in order to safeguard Confidential Information from access or use that is not authorised under this agreement; and

- (b) immediately notify the Discloser of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

### **4. Return of Confidential Information**

The Recipient must immediately, on request at any time made by the Discloser:

- (a) return to the Discloser;
- (b) destroy and certify in writing to the Discloser the destruction of; or
- (c) destroy and permit an employee of the Discloser to witness the destruction of,

all the Discloser's Confidential Information, stored in any medium, in the Recipient's possession or control (including the original medium, copies and that part of notes and other records prepared by the Recipient based on or incorporating any Confidential Information).

### **5. Right to Disclose But No Other Warranty**

The Discloser warrants that it has the right to disclose the Confidential Information to the Recipient. Otherwise, all Confidential Information is provided solely for the purpose of assessing the Purpose and without any warranty (express, implied or otherwise) regarding the accuracy or completeness of the Confidential Information being given by the Discloser. The only warranties provided by the Discloser will be those (if any) contained in a definitive and binding agreement entered into by the parties (if any) in relation to the Purpose.

### **6. No Further Rights**

The Confidential Information remains the property of the Discloser and the Recipient obtains no proprietary rights of any kind to it. The grant of access to the Confidential Information by the Discloser is not an express or implied licence to use the Confidential Information for any other purpose than in connection with the Recipient's consideration of the Purpose.

**7. Termination**

A party may terminate this agreement at any time by giving 30 days prior written notice to the other party. On termination, the Recipient will have no right to continue to use the Discloser's Confidential Information but must continue to keep that Confidential Information confidential in accordance with clauses 2, 3 and 4 of this agreement which survive termination for a period of 5 years from the date of termination. Any other terms which are intended by their nature to survive termination, survive termination in accordance with their terms.

**8. No Obligation**

The provision of the Confidential Information to the Recipient is not an express or implied representation or warranty that the

Discloser will proceed with the Purpose. The Discloser may at any time advise that it no longer wishes to proceed with the Purpose or no longer wishes to deal with the Recipient or any of them in relation to the Purpose.

**9. Governing Law**

This agreement is governed by the laws of New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

**10. Counterpart**

This agreement may be executed in any number of counterparts. A counterpart may be a facsimile or a scanned and emailed counterpart. Together all counterparts make up one document.

**Dated as at the date of last execution**

Executed by **Saluda Medical Pty Limited**

.....  
Authorised Representative

Name (please print):

Position:

Date:

Executed by: Name of Other Party (Recipient)

.....  
Authorised Representative

Name (please print):

Position:

Date:

## **SCHEDULE**

- Item 1: Recipient(s):** [Full legal name of other party (recipient) including, if a company, appropriate company designation eg Pty Ltd, LLC, Inc etc ] of [address]
- Item 2: Purpose:** [Solely for the purpose of determining whether the parties wish to enter into a business relationship in connection with the purpose, the negotiation of documentation in connection with that purpose and such other purpose as may be agreed in writing.]