

## CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement (hereafter "Agreement"), effective as of \_\_\_\_\_ ("Effective Date"), is executed by **Medtronic, Inc.**, having an address at 710 Medtronic Parkway NE, Minneapolis, MN 55432 ("Medtronic"), and \_\_\_\_\_, United States ("Undersigned"). Each of the Undersigned and Medtronic are a "Party" and collectively the "Parties" under this Agreement.

**1. Purpose.** Medtronic and/or its Affiliate is the owner of certain confidential information that it may share with Receiving Party for the purpose of potentially entering into a business relationship (the "Purpose"). During the course of the discussions and evaluation of the Purpose, and prior to entering into any written contract defining the relationship, it may become necessary for Medtronic and/or its Affiliate to disclose confidential information relating to certain of its products, business and/or technologies.

**2. Confidential Information.** "Confidential Information" means all confidential and/or proprietary information disclosed by Medtronic or an Affiliate or third party on behalf of Medtronic to Receiving Party, including but not limited to: the fact and terms of this Agreement and the discussions related to the Purpose; information, current or historical data, techniques, know-how, practices, reports, forecasts, ideas, designs, plans, processes, drawings, sketches, specifications, models, samples, material compositions, circuit schematics, manufacturing techniques, devices, computer programs, pro formas or documentation, formulas, algorithms, marketing plans, and business plans and all other technical, scientific, financial or business data, and such information shall be presumed to be Confidential Information whether the communication of the information was in written, electronic, oral, tangible or intangible form when transmitted to Receiving Party, and regardless of whether or not such information is labeled or identified as "confidential," "proprietary," or the like. Receiving Party may not use Medtronic's name in any press release, circular, advertisement or other publication without Medtronic's prior written permission. Confidential Information also includes any such information that is observed by Receiving Party while on Medtronic's property, even if it is not disclosed knowingly or directly by Medtronic. An "Affiliate" an entity, whether now or in the future, that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Medtronic. For this purpose, "control" means ownership of at least fifty percent of the voting shares or the power to direct or cause the direction of, the management, governance or policies of an entity, directly or indirectly, through any applicable means including legal, beneficial or equitable ownership, partnership, or some other form of interest, by contract or other applicable legal document or otherwise.

**3. Exceptions.** Confidential Information will not include any information that: (a) is or becomes publicly available through no fault of Receiving Party; (b) is already known to Receiving Party and has been reduced to writing by Receiving Party prior to the Effective

Date; (c) was independently developed by Receiving Party without utilizing Confidential Information; (d) is approved in writing by Medtronic for release by Receiving Party; or (e) is disclosed without restriction to Receiving Party in good faith by a third party who is in lawful possession thereof and who has the right to make such disclosure. Receiving Party shall bear the burden of proving by the preponderance of the evidence that any Confidential Information is subject to an exception under this section. Confidential Information shall not be deemed to be within any of the foregoing exceptions merely because it is embraced by general disclosures within such exceptions or within writings or other materials containing both Confidential Information and non-confidential information.

**4. Disclosure and Use.** Except as expressly provided in this Agreement, Receiving Party will not disclose Confidential Information to any third party without Medtronic's prior written consent. Confidential Information will be used by Receiving Party solely for the Purpose. Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures taken to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Receiving Party shall not analyze, disassemble, reproduce or reverse engineer any products, samples, experimental materials or other tangible reproduction of Confidential Information or transfer such items to or have them analyzed, disassembled, reproduced or reverse-engineered by any third party without Medtronic's express prior written approval.

**5. Legally Compelled Disclosure.** If, on the advice of legal counsel, Receiving Party is compelled by court order or law ("Order") to disclose Confidential Information, Receiving Party, unless prohibited by law, shall promptly notify Medtronic of such fact and shall cooperate fully with Medtronic in: (a) preparing a disclosure that complies with the minimum requirements of the Order; (b) opposing an Order or seeking to limit the disclosure to the minimum extent necessary to comply with the Order; (c) seeking a protective order; or (d) appealing the Order. Failing any of the above, Receiving Party shall disclose only such Confidential Information to the minimum extent required to comply with the Order. Receiving Party shall continue to be bound under this Agreement with respect to the Confidential Information disclosed under the Order unless Confidential Information becomes a matter of public record in connection with the legal process.

**6. Personnel.** Receiving Party will restrict access to Confidential Information to only those of its employees and contractors (collectively, "Personnel") who have a need to know the Confidential Information for the Purpose. Receiving Party will ensure its Personnel comply with this Agreement as if each were a party hereunder and Receiving Party will remain responsible for any breach of the obligations contained herein by any such Personnel. Further, any contractors receiving Confidential Information from Receiving Party must first execute a written agreement to treat the Confidential Information confidential in a substantially similar manner as required in this Agreement.

**7. Right to Enjoin Disclosure.** Receiving Party acknowledges that its breach of this Agreement shall result in irreparable harm not compensable by monetary damages. Therefore, if Receiving Party violates or threatens to violate this Agreement, Medtronic may seek equitable relief against Receiving Party without the necessity of posting any bond or other surety, in addition to all other rights and remedies available to Medtronic at law and in equity.

**8. Ownership of Confidential Information; Limited Relationship.** Confidential Information will remain the exclusive property of Medtronic, and Receiving Party will not have rights, by license or otherwise, to use the Confidential Information except as expressly provided in this Agreement or any subsequent written agreement signed by Medtronic and Receiving Party. Nothing herein is intended to create or imply any obligation to enter into any other agreement.

**9. Termination and Return of Confidential Information.** The term of this Agreement shall run from the Effective Date for a period of 1 Year. Either party may terminate this Agreement with thirty (30) days prior written notice to the other party at the address in the first paragraph above. All obligations under this Agreement with respect to Confidential Information disclosed prior to termination or expiration of this Agreement shall survive for a period of five (5) years from the date of expiration or termination of this Agreement, except for (a) the protection of trade secrets as defined under the Uniform Trade Secrets Act, codified at Minn. Stat. § 325C (2006), which shall survive until such Confidential Information is no longer considered a trade secret or (b) personal health information or personal data which shall survive indefinitely. Upon the earlier of termination or expiration of this Agreement or written request from Medtronic, Receiving Party shall return or destroy all copies of the Confidential Information, including any summaries, extracts or other compilations created from the Confidential Information. However, nothing in this Section 9 shall be construed to require the deletion of any items of Confidential Information that are contained in electronic form on archive systems or other disaster recovery systems from which such items cannot reasonably be deleted; provided, however, that such Confidential Information shall remain subject to the terms of this Agreement.

**10. Entire Agreement; Amendment; Successors in Interest.** This Agreement and any attachments hereto make up the entire agreement between the parties regarding the Purpose and the Confidential Information and supersedes any and all prior oral and written agreements and understandings between the parties relating to the Purpose and the Confidential Information. All other executed agreements between the parties, if any, shall remain in full force and effect according to their respective terms. This Agreement may only be amended or modified in writing signed by authorized representatives of each party. This Agreement will be binding on and inure to the benefit of both parties and their respective successors in interest.

**11. Waiver.** Any failure by either party to enforce each other's strict performance of any provision of this Agreement will not constitute a waiver of either party's right to subsequently enforce such provision or any other provision of this Agreement.

**12. No Further Obligations; Relationship of the Parties.** Nothing in this Agreement imposes any duty or obligation on Medtronic to share Confidential Information with or enter into any business arrangement or transaction with Receiving Party. The parties are independent contractors and this Agreement does not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has the power under this Agreement to bind the other party or to incur any obligations on its behalf, without the other party's express prior written consent.

**13. Governing Law; Severability.** This Agreement will be governed by the laws of the State of Minnesota, without reference to its choice of law rules. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and when necessary, the court is requested to amend any and all terms or conditions to give them such effect.

**14. No Warranty.** Medtronic does not make any representations, extend any warranties of any kind, either express or implied, or assume any responsibilities whatsoever with respect to the adequacy, accuracy, completeness, operability, fitness for a particular purpose, or utility of any information, including Confidential Information, obtained or used by Receiving Party under this Agreement. The information, including Confidential Information, is provided "AS IS" without warranty or guarantee of any kind and Medtronic shall not be liable to Receiving Party for any damages, loss, expense or claim of loss arising from the use of or reliance upon the information.

**15. Export Administration.** U.S. export control laws and the export and import control laws of other countries may govern the use of Confidential Information. Receiving Party agrees to comply fully with relevant laws and regulations, including the U.S. Export Administration Act and Regulations, to assure that no Confidential Information or any portion thereof is exported, directly or indirectly, in violation of law.

**16. Assignment.** Receiving Party may not assign this Agreement without the prior written consent of Medtronic. This Agreement shall be binding upon the assigns and successors of each party.

**17. Signature.** This Agreement may be signed in any manner that clearly evidences the Parties' intent to be bound, including via faxed, imaged, electronic or digital signatures, and in one or more counterparts, all of which shall be considered one and the same agreement. If this Agreement is signed electronically, then both parties (i) have agreed to

use electronic signatures; and (ii) have agreed to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (enacted June 30, 2000, and codified at 15 U.S.C. § 7001 et seq)).

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement through duly authorized representatives as of the Effective Date.

**MEDTRONIC, INC.**

MDT BY: \_\_\_\_\_

MDT PRINT NAME: \_\_\_\_\_

MDT TITLE: \_\_\_\_\_

MDT DATE: \_\_\_\_\_

\_\_\_\_\_  
PARTY BY: \_\_\_\_\_

PARTY PRINT NAME: \_\_\_\_\_

PARTY TITLE: \_\_\_\_\_

PARTY DATE: \_\_\_\_\_

DRAFT - SUBJECT TO LEGAL REVIEW