

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (“Agreement”) is made by and between American Biomedical Pandemic Mask Company LLC., a Texas company, and **Individual as Identified in the associated WebForm** (each hereinafter referred to as “Disclosing Party” or “Recipient”, as appropriate) effective as of _____ (“Effective Date”).

WHEREAS, American Biomedical Pandemic Mask Company is proposing to send evaluation sample(s) of its AVF Shield & Cartridge System(s)TM to the Recipient; and

WHEREAS, each party understands that American Biomedical Pandemic Mask Company may be irreparably and materially harmed if any of its AVF Shield & Cartridge SystemTM were disclosed, revealed or communicated to any unauthorized person, or if such information were used for any purpose other than the current purpose;

WHEREAS, each party understands that the other may be irreparably and materially harmed if any of its Confidential Information, as hereinafter defined, were disclosed, revealed or communicated to any unauthorized person, or if such information were used for any purpose other than the current discussions and any resulting business arrangement or transaction between the parties;

NOW THEREFORE, each of the undersigned, on its own behalf and on behalf of its employees, officers, directors, representatives, contractors, consultants, agents, and affiliates (collectively, “Representatives”), agrees and covenants with the other as follows:

1. **Definition of Confidential Information:** “Confidential Information” as used in this Agreement shall mean any and all confidential or proprietary knowledge, data, or information, in any form whatsoever, whether provided prior to the execution of this Agreement or subsequently. Confidential Information includes, without limitation, all inventions, ideas, know-how, and information regarding research and development, product and business plans, trade secrets, technology, formulations, products, prices, costs, samples, processes, techniques, specifications, applications, technical and statistical data, operations, manufacturing, marketing, purchasing, merchandising, selling and business plans, financial and accounting information and records, and information regarding licensing arrangements, customers, suppliers, distributors, strategic partnerships, joint ventures, and other persons and entities with which the Disclosing Party or its Representatives do business. Confidential Information includes not only written materials but also information transferred orally, visually, electronically or by other means, and includes any and all analyses, compilations, studies, accounts or other documents prepared by the receiving party or its Representatives (or by others at their request or on their behalf) which contain or reflect any part of such information and all copies of the foregoing.

2. **Exclusions:** Confidential Information does not include information: (a) that was in the public domain or readily discernible from items or information generally available to the public prior to disclosure hereunder; (b) that becomes publicly available after disclosure hereunder other than through breach of this Agreement; (c) that Recipient can document was rightfully in its possession prior to disclosure hereunder or independently developed by Recipient without use of or reference to any Confidential Information of the Disclosing Party; (d) that is obtained independently from a third party who, to the best of Recipient's knowledge, is lawfully in possession of the same and has the right to make such disclosure without restriction of confidentiality. The obligations of confidentiality and non-use set forth in this Agreement shall not apply with respect to any information that the Recipient is required to disclose by applicable law, court order, or other valid legal process provided that Recipient promptly notifies the Disclosing Party prior to such required disclosure, discloses such information only to the extent so required, and cooperates reasonably with the Disclosing Party's efforts to contest or limit the scope of such disclosure or to obtain a protective order or other appropriate relief. For purposes of the foregoing, specific Confidential Information shall not be deemed to be available to the public merely because such specific Confidential Information is embraced by more general information that is available to the public.

3. **Protection of Confidential Information:** During the course of the discussions between the parties and at all times thereafter, each party and its Representatives will hold and maintain strictly confidential, and will protect from unauthorized disclosure, dissemination or use, all Confidential Information of the other party. Except with the Disclosing Party's prior written consent, neither party receiving Confidential Information of the other party will (a) make or retain copies or otherwise reproduce any Confidential Information, including through techniques of reverse engineering, or (b) compile, develop, adapt, duplicate or otherwise use such Confidential Information for any purpose whatsoever, other than the current discussions and, if approved, for purposes of any resulting business arrangement between the parties. Each party acknowledges that all Confidential Information disclosed by the other party is the property of the Disclosing Party, and the disclosure of such Confidential Information does not result in the Recipient obtaining any property or other rights therein. Each party agrees to disclose or allow access to the Confidential Information only to its Representatives who (i) are informed of the restrictions of this Agreement, (ii) are instructed not to disclose the Confidential Information, and (iii) have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. Each party agrees and acknowledges that it will be responsible for any breach of this Agreement by its Representatives.

4. **Standard of Care:** Each party shall protect and preserve the confidentiality of all Confidential Information of the other party utilizing at least the same degree of care as it employs with respect to its own information of like importance, but no less than reasonable care.

5. **Marking:** To the extent reasonably practicable, all Confidential Information disclosed under this Agreement that is in written form shall be marked as "Proprietary," "Confidential," or with words of similar import, and Confidential Information disclosed in any manner other than writing shall be preceded by an oral statement indicating that the information is proprietary or confidential and followed by written confirmation identifying the information as "Confidential Information." Notwithstanding the foregoing, "Confidential Information" shall also include information disclosed orally, electronically or in any other tangible or intangible form, whether or not identified or marked as "Confidential" or confirmed in a written summary by the Disclosing Party, if Recipient knows or reasonably should know that the information relates to and is within the scope of Confidential Information disclosed in accordance with the foregoing.

6. **Return or Destruction:** Upon request by the Disclosing Party at any time, Recipient agrees to return promptly all tangible items and written documents delivered or provided to, or otherwise acquired by or in the possession of, Recipient which include Confidential Information of the Disclosing Party, including notes, samples, models, summaries, memoranda, records and other documents, and all copies thereof, and agrees that it will promptly destroy all memoranda, notes, summaries and other writings made, prepared or compiled by Recipient or its Representatives based upon Confidential Information of the Disclosing Party.

7. **Term:** Each Recipient's obligations with respect to Confidential Information disclosed hereunder shall continue for a period of three (3) years from the date of disclosure. All rights and obligations accruing prior to termination as set forth herein shall survive termination.

8. **Confidential Discussions.** Each party agrees that, except as otherwise required by law, it will not directly or indirectly disclose to any third party the existence or subject matter of this Agreement, except as expressly permitted hereunder or consented to by the other party in writing.

9. **Transferability:** Neither party may assign this Agreement in whole or in part, or of any of its rights and obligations hereunder, without the other party's prior written consent; provided, however, that either party may assign this entire Agreement to any successor entity to which all or substantially all of its assets or equity interests have been sold, or resulting from the consolidation or merger of such party with or into any other entity. This Agreement shall bind and inure to the benefit of the parties and their permitted successors and assigns.

10. **Limitations**: Neither party acquires intellectual property under this Agreement. This Agreement imposes no obligation on either party to purchase, sell, license, transfer or otherwise dispose of any technology, services, or products. This Agreement does not create any agency or partnership relationship. Each party disclosing information under this Agreement warrants that it has the right to make such disclosures free from any contractual or other restrictions. No other warranties are made by either party with respect to the information exchanged hereunder, all of which shall be provided “AS IS.”

11. **Export Compliance**: Recipient shall comply with all applicable U.S. export control laws and regulations, including without limitation the requirements of the International Traffic in Arms Regulations, the Export Administration Act, and other applicable laws and regulations, and shall not export, re-export, or otherwise transmit, directly or indirectly, any product, sample, information, technical data, or other materials received from the Disclosing Party, or information which is the direct product of such information, unless in full compliance with all applicable laws and regulations, including obtaining any required approvals or export licenses. Recipient shall obtain the written consent of the Disclosing Party prior to submitting any request for authority to export any such information, and shall indemnify and hold Disclosing Party harmless from all claims, demands, damages, costs, fines, penalties, attorneys’ fees, and all other expenses arising from failure of the Recipient to comply with this section or applicable U.S. export control laws and regulations. This section shall survive any termination of this Agreement.

12. **Remedies**: It is understood and acknowledged that a breach of any of the covenants or provisions herein by either party may cause the other party irreparable harm that could not be adequately compensated for by damages. Accordingly, in the event of any threatened or actual breach of this Agreement, the non-breaching party may, in addition to any other specific remedy for relief, enforce the performance of this agreement by injunction or specific performance upon application to a court of competent jurisdiction. The parties mutually agree that each party shall have the right to seek and obtain an injunction or specific performance under this section even if monetary damages are available and readily quantifiable, and that such relief may be obtained without proving in advance the existence or amount of actual damage, the mere risk of potential damage being sufficient. Recipient shall immediately advise the Disclosing Party of any discovered breach by Recipient or its Representatives and shall reasonably assist the Disclosing Party in retrieving the disclosed Confidential Information and restricting any continuing breach.

13. **Governing Law; Arbitration**: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, USA, without giving effect to any conflict of law provision that would cause the application of the laws of any other jurisdiction. Any dispute arising out of this Agreement which cannot be resolved through negotiations between the parties (other than requests for injunctive relief) shall be submitted to binding arbitration under the then current Rules of the American Arbitration Association pertaining to commercial disputes or, if mutually agreed by the parties, under the then current Rules of Arbitration of the International Chamber of Commerce (as applicable, the “Rules”) by one or more arbitrators appointed in accordance with the Rules. The place for arbitration shall be Houston, Texas and proceedings shall be conducted in the English language. The arbitrator’s decision shall be final, non-appealable and binding upon the parties, and may be entered in and enforced by any court of competent jurisdiction. The party prevailing in the arbitration (as specifically determined by the arbitrator) shall be entitled to recover its costs, including reasonable attorney’s fees, incurred in connection with such proceedings. The obligations of the parties under this Section shall survive expiration or termination of this Agreement.

14. **Entire Agreement; Amendment; Waiver**: This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes any prior or contemporaneous communications or understandings regarding such subject matter. If any judicial or administrative authority determines that any term of this Agreement is invalid or illegal, such determination shall not apply to the remaining terms of this Agreement, all of which shall remain in full force and effect. This Agreement may not be amended except by a written agreement signed by the parties. No failure or delay by either party in exercising any right, power or

privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

15. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date set forth above.

(Signature) (Date)

Name: Scott A. Cohen

(Type or Print)

Title: General Manager

(Signature) (Date)

Name:

(Type or Print)

Title:
