

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (“Agreement”) is made and entered into effective _____, 2018 (the “Effective Date”) by and between the Society for Cardiovascular and Magnetic Resonance (“SCMR”) and _____ (“XYZ”) to assure the protection and preservation of confidential information to be disclosed or made available by the parties to each other in connection with certain discussions and negotiations regarding a possible support relationship between the parties with respect to the SCMR clinical data registry (the “Authorized Purpose”).

NOW THEREFORE, for the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Confidential Information.** The term "Confidential Information" shall include, but not be limited to, any and all oral or written non-public information provided by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) regarding the Authorized Purpose, regardless of the media and regardless of whether such information was disclosed before, on, or after the effective date of this Agreement. “Confidential Information” specifically includes all discussions between the parties regarding the Authorized Purpose. The term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of a wrongful disclosure by the Receiving Party or its employees, officers, directors, agents, advisors, contractors, or representatives (collectively, "Agents"), (b) was actually known by the Receiving Party prior to disclosure hereunder as evidenced by the Receiving Party’s tangible records; or (c) is developed or discovered by the Receiving Party independently and solely without the use of any Confidential Information disclosed hereunder.
2. **Restricted Use of Confidential Information.** Subject to the restrictions contained in this Agreement, the Receiving Party may use Confidential Information only in pursuance of the Authorized Purpose and the investigation of a possible business relationship with the Disclosing Party. Except as expressly provided in this Agreement, the Receiving Party will not disclose the Disclosing Party’s Confidential Information to anyone without the Disclosing Party’s written consent. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature.
3. **Receiving Party Personnel; Affiliates.** The Receiving party will restrict the possession, knowledge and use of Confidential Information to its employees and contractors (collectively, “Personnel”) who (i) have a need to know Confidential Information in connection with the party’s business relationship, and (ii) have executed written nondisclosure agreements obligating them to protect the Confidential Information. The Receiving Party will ensure that its Personnel comply with this Agreement and their respective nondisclosure agreements.
4. **Reproduction of Confidential Information.** Confidential Information made available to the Receiving Party may not be copied or reproduced without the Disclosing Party’s prior written consent. Any copies of the Confidential Information made by or for the benefit of the Receiving Party are, and shall become, the proprietary property of the Disclosing Party. All such copies must include all applicable notices of copyright and any other proprietary rights, notices, or legends contained in the Confidential Information, if any, and shall be marked to indicate their confidential nature.
5. **Ownership of Confidential Information.** All Confidential Information will remain the exclusive property of the Disclosing Party. The Disclosing Party is and shall continue to be the owner of all rights, title, and interests in, and of all patents, copyrights, trade secrets, trademarks, and proprietary rights in and to, any Confidential Information made available to the Receiving Party hereunder, including all additions, enhancements, modifications, and derivative works. The Disclosing Party’s disclosure of Confidential

Information will not constitute an express or implied grant to the Receiving Party of any rights to or under the Disclosing Party's patents, copyrights, trade secrets, trademarks or other intellectual property rights. Nothing in this Agreement shall be construed to convey to the Receiving Party any license to use, sell, exploit, copy, or further develop the Confidential Information beyond the limited rights and privileges set forth in this Agreement.

6. **Notice of Unauthorized Use.** The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use.
7. **Return of Confidential Information.** The Receiving Party will return or destroy all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party's written request. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this section.
8. **Disclaimer of Representations and Warranties.** The Receiving Party agrees that neither the Disclosing Party nor any of its Agents has made or will make, and specifically disclaims, any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Receiving Party also agrees that neither the Disclosing Party nor any of its Agents shall have any liability to the Receiving Party or any of its Agents relating to or resulting from the use of the Confidential Information.
9. **Remedies for Breach.** The Receiving Party agrees that disclosure of any Confidential Information or breach of any covenant set forth in this Agreement above will result in irreparable harm to the Disclosing Party for which there is no adequate remedy at law. Accordingly, in the event of a breach or threatened breach of the provisions of this Agreement by the Receiving Party or any of its Agents, in addition to any other remedy that the Disclosing Party may have at law or in equity, the Disclosing Party shall be entitled to injunctive or similar relief to enforce specifically such provisions, without posting bond or other security.
10. **Scope; Termination.** This Agreement is intended to cover Confidential Information received by Receiving Party both prior and subsequent to the date hereof. This Agreement automatically will terminate upon the termination of the parties' discussions regarding the Authorized Purpose of their subsequent business relationship (if any); provided, however, that the Receiving Party's obligations with respect to the Confidential Information will indefinitely survive such termination. Notwithstanding the foregoing, nothing contained herein shall be construed as committing either party to enter into any further agreements of any kind with the other party.
11. **Amendments, Assignment, and Entire Agreement.** This Agreement may not be modified, amended, or supplemented except by an agreement in writing signed by both parties. This Agreement and the rights and obligations hereunder shall not be assignable by the Receiving Party without the express written consent of the Disclosing Party. This Agreement shall constitute the entire agreement between the parties hereto with respect to the transactions contemplated hereby and shall supersede all prior or contemporaneous negotiations, understandings, and agreements.
12. **Court Costs and Attorneys' Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the Disclosing Party shall be entitled to recover costs of court and reasonable attorneys' fees from the Receiving Party, which fees shall be in addition to any other relief that may be awarded, and which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose.

13. **Notice.** Any notice required or permitted under the terms of this Agreement shall be in writing and shall be addressed to the party to whom notice is intended at the address stated below, and delivery shall be deemed to have been made upon the earlier to occur of actual receipt of such notice by the intended recipient thereof if delivered by hand, overnight delivery service, facsimile or regular or electronic mail.
14. **Waiver.** The failure of any party to insist upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, covenant, or condition, and such failure shall in no way affect the validity of this Agreement or the rights and obligations of the parties hereto.
15. **Counterparts.** This Agreement may be executed in multiple counterparts, which together shall constitute one agreement. Electronic or facsimile signatures shall have the same legal effect as originals.
16. **Severability.** In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.
17. **Governing Law; Forum.** This Agreement shall be governed by and construed under the laws of the State of New Jersey. Any legal action brought to enforce the terms of this Agreement must be brought in the State of New Jersey.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed by an authorized official to be effective as of the day and year first written above.

SCMR

[XYZ]

By: _____
 Name: _____
 Title: _____
 Notice Address: _____

 Attention: _____

By: _____
 Name: _____
 Title: _____
 Notice Address: _____

 Attention: _____