



CONFIDENTIALITY AGREEMENT (Mutual disclosure)

THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made this 28th day of March 2019 (the “**Effective Date**”) by and between **Howmedica Osteonics Corp.** (hereafter, “**Company**”) with a place of business at 325 Corporate Drive, Mahwah, New Jersey 07430 and [Name]: _____ (hereafter, “**Other Party**”) with a place of business at [Address]: _____. Company and Other Party are referred to herein collectively as the “**Parties**” and individually as a “**Party**.” A Party disclosing Confidential Information (as defined below) pursuant to this Agreement shall be referred to as the “**Disclosing Party**” and a Party receiving such Confidential Information pursuant to this Agreement shall be referred to as the “**Receiving Party**”.

WHEREAS Company represents that it possesses and is the owner of certain confidential and proprietary information related to Company’s Stryker Orthopaedics medical devices and processes, and Other Party represents that it possesses and is the owner of certain confidential and proprietary information related to Other Party’s FIU Biomedical Engineering (BME) Clinical Rotations (hereafter, and as further defined below, “**Confidential Information**”); and

WHEREAS, subject to the terms and conditions of this Agreement, Company and Other Party each wish to receive and review the Confidential Information of the other for the express purpose of FIU BME Clinical Rotations office visit (hereafter, “**Authorized Purpose**”).

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Company and Other Party agree that:

1. Standard Protection and Use of Confidential Information. Each Party shall use at least the same level of care to prevent any unauthorized use or disclosure of the Confidential Information of the other Party as it exercises in protecting its own information of a similar nature, but in no event less than a reasonable standard of care. The Receiving Party shall not, without the prior written consent of the Disclosing Party, make use of the Confidential Information disclosed to it except in connection with the Authorized Purpose, or disclose the Disclosing Party’s Confidential Information to anyone except to any of its officers, directors, employees, agents or consultants, or those of its Affiliates (hereafter, “**Representatives**”) to whom disclosure is necessary in connection with the Authorized Purpose and who have been made aware that the Confidential Information is confidential and are bound to treat it as such. As used herein, the term “**Affiliates**” shall be defined as: (i) any corporation or business entity fifty percent (50%) or more of the voting stock of which is, and continues to be, owned directly or indirectly by a Party; (ii) any corporation or business entity that directly or indirectly owns fifty percent (50%) or more of the voting stock of a Party; (iii) any corporation or business entity under the direct or indirect control of a corporation or business entity as described in (i) or (ii).

2. Definition of Confidential Information. For purposes of this Agreement, Confidential Information includes, but is not limited to the existence and terms of this Agreement; the identities of the Parties; the Authorized Purpose; technical and product information; drawings, diagrams, schematics and specifications; marketing, customer, pricing, financial and sales information; regulatory information and materials; intellectual property embodied in products and materials; and sample products that may be furnished to Receiving Party. Confidential Information shall also include all information or data, regardless of form (whether written, oral, photographic, electronic, magnetic, computer or otherwise) which is marked by a Party as confidential. Confidential Information, if not marked as “confidential” (or words of similar import) by the Disclosing Party at the time of disclosure may be designated as Confidential Information by the Disclosing Party, upon the Disclosing Party providing the Receiving Party with written confirmation of such within thirty (30) days after the Disclosing Party’s disclosure.

3. Exclusions from the Definition of Confidential Information. The confidentiality and non-use obligations of this Agreement shall not apply to the following as established by reasonable proof:

3.1 Information that at the time of disclosure is in the public domain or, after disclosure, becomes part of the public domain, other than as a result of disclosure by the Receiving Party or its Representatives in violation of the terms of this Agreement;

- 3.2 Information that Receiving Party can establish was lawfully in its possession prior to disclosure hereunder;
- 3.3 Information that was independently developed by persons working for or on behalf of the Receiving Party who had no knowledge of the Disclosing Party's Confidential Information and did not make direct or indirect use of the Disclosing Party's Confidential Information; or
- 3.4 Information that is or was received by the Receiving Party from a third party having a legal right to transmit the same, free of any confidentiality obligations to the Disclosing Party.

4. Legal Proceedings. Notwithstanding any provision herein to the contrary, in the event that any Receiving Party hereafter becomes obligated (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the Receiving Party shall immediately notify the Disclosing Party of each such requirement and identify the Confidential Information so required thereby so that the Disclosing Party may seek an appropriate protective order or other remedy with respect to narrowing the scope of the requirement and/or waive the Receiving Party's compliance with the terms hereof. If, failing the entry of an appropriate remedy or receipt of a waiver, the Receiving Party, based on advice of its counsel, is compelled to disclose Confidential Information, the Receiving Party may disclose that portion of the Confidential Information that its counsel advises, only after consultation with counsel for the Disclosing Party, that the Receiving Party is compelled to disclose. In any event, Receiving Party shall reasonably cooperate in any action by the Disclosing Party (at Disclosing Party's expense) to obtain an appropriate protective order or other reliable assurance that the information shall be treated as confidential.

5. Ownership of Confidential Information. All Confidential Information is and shall remain the property of the Disclosing Party. Neither this Agreement nor any disclosure hereunder shall be deemed, by implication, estoppel or otherwise, to vest in the Receiving Party any license or other ownership rights to the Confidential Information or under any Confidential Information or inventions, patents, know-how, trade secrets, trademarks or copyrights owned or controlled by the Disclosing Party.

6. No Representations Regarding Confidential Information. The Disclosing Party warrants that it owns or is otherwise free to disclose the Confidential Information that it will disclose to the Receiving Party pursuant to the terms of this Agreement. Except for the foregoing, Receiving Party acknowledges that neither Disclosing Party nor any of its Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and Receiving Party agrees that no such person shall have any liability on any basis arising out of the accuracy or completeness of the Confidential Information, or lack thereof (including, without limitation, in contract, tort, under federal or state securities laws or otherwise). This Agreement shall not be deemed to create any obligation on either Party to disclose any or all Confidential Information that a Party may have related to the Authorized Purpose.

7. Return or Destruction of Confidential Information. Upon completion of the Authorized Purpose and in the absence of any further agreement between the Parties, Company and Other Party each shall cease all use and make no further use of any Confidential Information disclosed to it by the other Party and shall, upon written request from the Disclosing Party, promptly return or destroy all Confidential Information (including copies thereof) that is in tangible form (including electronic imaging of Confidential Information) and any documents created by the Receiving Party containing Confidential Information. The Receiving Party shall provide to the Disclosing Party written certification of destroyed Confidential Information within ten (10) days of the destruction thereof.

8. Notice. All notices, requests, demands and other communications to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand, sent by facsimile or other means of electronic communication with confirmation, sent by a nationally recognized overnight delivery service, or certified mail return receipt requested, to:

<i>To Company :</i>	<i>To Other Party:</i>
Howmedica Osteonics Corp.	Name:
325 Corporate Drive	Address:
Mahwah, New Jersey 07430	

Attention: Legal Department	Attention:
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Notices shall be effective upon receipt. A Party may change its address listed above by notice to the other Party.

9. Survival. Except as may otherwise be extended by the Parties in writing, the confidentiality and non-use obligations under this Agreement shall expire on the third anniversary of the Effective Date.

10. Remedies. Company and Other Party shall notify the other Party immediately if it knows or reasonably suspects that the terms of this Agreement have been breached. Each Party agrees that any unauthorized use and/or disclosure of the Confidential Information of the other Party may cause irreparable harm to the Disclosing Party for which monetary damages would be inadequate and that the provisions of this Agreement may be enforced by way of a restraining order or injunction and/or specific performance in addition to any other available legal remedies.

11. Other Activities. Each of the Parties, as a Disclosing Party, understands that the other Party, as a Receiving Party, may currently or in the future be developing information internally, or receiving information from others that may be similar to the Disclosing Party's Confidential Information.

11.1 Nothing in this Agreement shall limit a Receiving Party's existing research and/or development, plans or programs in existence when the Confidential Information is disclosed to the extent that the Receiving Party does not use the Confidential Information belonging to the Disclosing Party as part of its existing research and/or development plans or programs.

11.2 Nothing in this Agreement shall be construed as a representation or inference that the Receiving Party shall not develop products or services or have products or services developed for the Receiving Party that, without violation of this Agreement, compete with the products or systems contemplated by the Disclosing Party's Confidential Information.

11.3 Nothing in this Agreement shall be construed or interpreted to prevent the Receiving Party from filing a patent application on the Receiving Party's own inventions that were conceived independently of the Disclosing Party's Confidential Information.

12. General Terms. Except as provided below, neither Party may assign this Agreement without the prior written consent of the other Party, except that Company shall have the right to assign this Agreement or any rights under or interests in this Agreement to an Affiliate. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by successors and assigns of the Parties. This Agreement shall not be deemed to create any obligation on either Party to consummate any other agreement or business relationship. This Agreement shall not confer any right or remedy upon any person other than the Parties and their respective successors and permitted assigns. The waiver of any right or remedy by a Party for a breach of this Agreement by the other Party shall not be construed to be a waiver by such Party of any future breach. This Agreement contains all of the terms of the Agreement between the Parties with respect to this subject matter and any modification or amendments to this Agreement must be in writing and signed by both Parties. If any provision of this Agreement shall be deemed illegal, invalid or unenforceable the parties shall endeavor to replace it by another provision that shall as closely as possible reflect their original intention. The validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles. This Agreement may be executed and delivered in counterparts, including via facsimile or Adobe Acrobat or “.pdf” format, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized corporate officers or representatives as of the date first above written.

HOWMEDICA OSTEONICS CORP.

FIU BIOMEDICAL ENGINEERING

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____