

# MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (Agreement) is made between (*Company Name*) \_\_\_\_\_ with offices at (*Address*) \_\_\_\_\_, and Optivus Proton Therapy, Inc. (Optivus) with offices at 1475 S. Victoria Court, San Bernardino, CA 92408, and will be effective when this Agreement is fully signed. For purposes of this Agreement, a party to this Agreement who discloses its Confidential Information (as defined below) to the other party to this Agreement shall sometimes be referred to as the “Disclosing Party.” The party to this Agreement who receives such disclosed Confidential Information from the Disclosing Party shall sometimes be referred to as the “Receiving Party.” In connection with discussions regarding evaluating entering into a transaction (the “Proposed Transaction”) relating to (*Purpose*) \_\_\_\_\_, (*Company Name*) \_\_\_\_\_ and Optivus may each disclose Confidential Information as herein described to the other party to this Agreement for purposes of evaluating the feasibility of entering into the Proposed Transaction. In order to protect the confidential nature of such information, the parties agree as follows:

- 1. Definition of Confidential Information.** As used in this Agreement, “Confidential Information” of the Disclosing Party means and includes (a) trade secrets concerning the business and affairs of the Disclosing Party, whether viewed by the Receiving Party, or otherwise disclosed to the Receiving Party, product specifications, data, know-how, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, supplier lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures and any other information, of the Disclosing Party, however documented, that is a trade secret within the meaning of California’s applicable state trade secret law; and (b) information concerning the business and affairs of the Disclosing Party, which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training techniques and materials, and also includes all notes, analyses, compilations, studies, summaries and other material prepared by me containing or based, in whole or in part, upon any information included in the foregoing.
- 2. Requirements and Restrictions on Confidential Information.** The Receiving Party shall not use any Confidential Information disclosed to it by the Disclosing Party for any purpose other than to evaluate the feasibility of the Proposed Transaction. The Receiving Party shall not disclose or permit disclosure of any Confidential Information of the Disclosing Party to third parties or to employees, other than directors, officers, employees, consultants, attorneys, accountants, and agents of the Receiving Party who require that information in order to evaluate the Proposed Transaction, and who are bound by nondisclosure obligations sufficient to prohibit the improper disclosure of the Disclosure Party’s Confidential Information. The Receiving Party will maintain all Confidential Information of the Disclosing Party with the strictest care and in trust for the sole and exclusive benefit of the Disclosing Party. The Receiving Party agrees to notify the Disclosing Party in writing within fourteen (14) days of any actual or suspected misuse, misappropriation of unauthorized disclosure of Confidential Information of the Disclosing Party, which may come to the Receiving Party’s attention. Any use of the Disclosing Party’s Confidential Information other than to evaluate the feasibility of the Proposed Transaction is strictly prohibited. Prohibited use by the Receiving Party of

Disclosing Party's Confidential Information includes, without limitation, the use by the Receiving Party of any Confidential Information of the Disclosing Party to compete against the Disclosing Party, or the disclosure of the Disclosing Party's Confidential Information by the Receiving Party to others, whether for consideration or no consideration, who use or may use such Confidential Information to compete against the Disclosing Party.

3. **Exceptions.** The Receiving Party shall not have any obligation under this Agreement with respect to Confidential Information of the Disclosing Party that: (a) is or subsequently becomes publicly available without breach by the Receiving Party of any obligation under this Agreement; (b) was in the possession of the Receiving Party prior to the time of disclosure, under circumstances which was not a misappropriation of a trade secret under the state law of the commercial domicile of the Disclosing Party; (c) is developed by the Receiving Party independent of any Confidential Information of the Disclosing Party; (d) is obtained from a third party reasonably believed by the Receiving Party to be free to provide such information without breach of any obligation owed to the Disclosing Party; (e) is disclosed with the prior written approval of the Disclosing Party; or (f) Receiving Party is under an order of a court or administrative agency to disclose Confidential Information of the Disclosing Party; provided, however, that the Receiving party will take all reasonable steps to provide Disclosing Party with sufficient prior notice to contest the order or requirement. If Receiving Party claims that Confidential Information received by it from Disclosing Party is subject to any of the exclusions contained in clauses (a) through (f) above, it shall have the burden of establishing the applicability of such exclusion by clear and convincing documentary evidence.
4. **Terms of Obligations.** This Agreement shall continue in full force and effect for a period of five (5) years from the Effective Date. The Effective Date is defined as the date when this Agreement is signed by both parties.
5. **Return of Confidential Information.** Any and all records, notes and other written, printed, electronic or tangible materials pertaining to the Confidential Information, including all copies thereof, will be promptly returned or destroyed by the Receiving Party within five (5) days after: (a) receipt of the Disclosing Party's written request, or (b) the termination or conclusion of the business discussions or transactions between the parties. Upon request of the Disclosing Party, the Receiving Party will certify in writing that it has complied with the provisions of this Section 5.
6. **Equitable Relief.** Each party agrees that its obligations under this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business. Each party expressly agrees that due to the unique nature of the Disclosing Party's Confidential Information, monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of this Agreement. Accordingly, each party agrees that any such breach or threatened breach will cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available in law, equity or otherwise, the Disclosing Party will be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Receiving Party, without the necessity of proving actual damages.
7. **No License.** The parties acknowledge and agree that nothing contained in this Agreement will be construed as granting any rights, by license or otherwise, to any of the other party's Confidential Information except as expressly set forth in this Agreement.

8. **No Warranty.** All Confidential Information is provided “AS IS,” without any warranty express, implied or otherwise, including without limitations implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
  
9. **Governing Law and Jurisdiction.** This Agreement, and all transactions arising out of or relating to this Agreement, will be governed by and construed in accordance with the law of the State of California, without giving effect to its choice of law rules. The parties hereby agree that any dispute arising out of or relating to this Agreement will be subject to the exclusive jurisdiction of the United States District Court for the Southern District of California or Courts of the State of California, located in Los Angeles County.
  
10. **General.** This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter it addresses, and supersedes all prior written or oral representations or agreements regarding that subject matter. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect. Optivus and (*Company Name*) \_\_\_\_\_ are independent contractors, and nothing contained in this Agreement will be construed as creating a partnership or joint venture between them. The remedies expressly conferred herein upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law, and the exercise of any one remedy shall not preclude the exercise of any other. This Agreement may be amended or modified only by a written amendment and signed by authorized representatives of both parties. Failure to enforce any provision of this Agreement by a party will not constitute a waiver of any term hereof by that party. In the event of any dispute arising hereunder, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to such other relief as the court may order. This Agreement may be executed in two counterparts, each of which will be deemed an original and all of which together will constitute one instrument.

The persons signing this Agreement warrant that they have the authority to enter into this Agreement on behalf of the party they represent and agree to be the point of contact for documentation transfers.

<b>COMPANY NAME</b>	<u>Optivus Proton Therapy, Inc.</u>
Name: _____ (Printed)	Name: _____ (Printed)
Name: _____ (Signature)	Name: _____ (Signature)
Title: _____	Title: _____
Date: _____	Date: _____