



CONFIDENTIAL DISCLOSURE AGREEMENT

This agreement ("Agreement") is made and entered into on the date entered in the accompanying template "Effective Date"), by and between the individual listed in the accompanying template ("RECIPIENT"), and BVI¹, on behalf of itself and its worldwide affiliates and subsidiaries ("BVI") (each individually referred to herein as a "Party" and collectively referred to as the "Parties").

WHEREAS, BVI may, at its sole discretion, disclose to RECIPIENT Confidential Information (defined below), including but not limited to for demonstration, training and other purposes ("Purpose").

NOW THEREFORE, in consideration of the forgoing, and of the mutual covenants, promises, and agreements contained herein, the Parties hereby agree as follows:

1. "Confidential Information" shall mean and include the following, regardless of whether disclosed prior to, or after, the execution of this Agreement, (a) any and all confidential, proprietary, and/or trade secret information and material (whether marked confidential, proprietary or with other similar marking or not) relating to BVI, including without limitation BVI's endoscopy technology, surgical technology, business, clinical events, finance, technology, products, technical data sheets, intellectual property, samples, R&D, product research, software, specifications, marketing, sales, manufacturing, processes, equipment, materials, suppliers, vendors, and/or customers, (b) information or material that is proprietary or confidential information of a third party, which BVI is authorized to disclose to RECIPIENT; (c) the existence, nature or status of any discussions, negotiations and transactions of the sort referenced herein; (d) any other materials or information disclosed by or on behalf of BVI which are marked "confidential" and/or known or reasonably known by RECIPIENT to be confidential, and/or of a confidential and/or proprietary nature learned or disclosed in the course of discussions or other work undertaken between the Parties; and any information of whatsoever nature to the extent it is derived from or contains or reflects the information referred to under a., b. c. or d., including, without limitation, notes, memoranda and other documents (in whatever form) prepared by the RECIPIENT or any of its directors, supervisors, officers, employees, agents, financiers, professional advisers or counsels (each a "**Representative**").

¹ For the purposes of this Agreement, "BVI" means **Arcadophtha SARL**, a French corporation with its principal place of business at 11 Rue Antoine Ricord, 31100 Toulouse, France, registered under number N° FR54440530558 // **Beaver-Visitec International, Inc.**, a Massachusetts (USA) corporation, with its principal place of business at 500 Totten Pond Road, 10 CityPoint, Waltham, MA 02451, USA // **Beaver-Visitec International Sales Limited**, a UK corporation, with its principal place of business at Waterloo Industrial Estate, Bidford on Avon, Warwickshire, B50 4JH, UK // **Optikon 2000 S.p.A.**, an Italian limited liability company with sole shareholder, with its registered office at Via del Casale di Settebagni, 13, 00138 Rome, Italy, Italian Tax Code, VAT number and registration number with the Registry of Enterprises of Rome 04678121007, registration number with the Chamber of Commerce of Rome RM – 792919 // **PhysIOL S.A.**, a Belgian limited liability company, with its registered office at Liège Science Park, Allée des Noisetiers, 4, B-4031 Liège, Belgium (company number BE 0428.242.033) // **Vitreq BV**, a Netherlands corporation with its principal place of business at Seggelant-Noord 2, 3237 MG, Vierpolders, NL, (company number NL 60972084).

2. Confidential Information may be written, documentary, recorded, or otherwise fixed in a tangible medium, electronically, orally or visually, disclosed by BVI to RECIPIENT, created by RECIPIENT in the course of performing services or from information received from BVI, or acquired by RECIPIENT directly or indirectly from BVI, or from any third party. BVI may provide markings on tangible Confidential Information to indicate its confidential status and may take other measures to indicate the confidential status of intangible Confidential Information, but shall not be required to do so.
3. RECIPIENT agrees, and shall cause its employees, contractors and Representatives to agree, to maintain the Confidential Information in strict secrecy and confidence and to use Confidential Information only for the Purpose. RECIPIENT agrees that it will not, without the express written consent of BVI, disclose, reveal, or communicate all or any portion of the Confidential Information to any person or entity other than its Representatives who have a specific need to know such Confidential Information for the Purpose. RECIPIENT must ensure that each of its Representatives is aware, prior to such disclosure, reveal or communication of any portion of the Confidential Information, of the obligations under this Agreement and has signed a written confidentiality agreement confirming that such Representative adheres to the same obligations as if he or she were a recipient under this Agreement. RECIPIENT shall be responsible for any breach of this Agreement caused by or related to any act or omission of its Representatives or any other person to which it has disclosed, revealed, or communicated any portion of the Confidential Information. RECIPIENT specifically agrees that it shall not incorporate or otherwise use any Confidential Information in connection with any patent, trademark, or copyright application unless all rights to such patent, trademark, or copyright application are assigned to BVI in writing prior to such incorporation or use.

RECIPIENT will furthermore not attempt to determine the composition of any sample (each a "Sample") provided to it by BVI under this Agreement (if any), each of which such Samples shall be considered Confidential Information of BVI hereunder. At the end of its evaluation of any Sample received from BVI, RECIPIENT will return or destroy, as instructed by BVI at BVI's sole discretion, any unused quantities of such Sample as well as any materials made from or incorporating such Sample. RECIPIENT will promptly report the results of its evaluation of a Sample to BVI and will maintain all test and evaluation results as Confidential Information of BVI hereunder.

In relation to discussions between the Parties on a potential (or as the case may be, potential additional or other) business relationship, it is agreed that without BVI's prior written consent, the RECIPIENT will not, and will direct its Representatives not to, disclose to any person either the fact that discussion or negotiations are taking place. The term "person" as used in this Agreement shall be broadly interpreted to include without limitation any corporation, company, partnership, other legal entity and individual.

RECIPIENT can only make copies of the Confidential Information provided that this is strictly necessary for the Purpose. BVI reserves the right **not** to permit copies to be made. The recording and/or the taking of any photographs of Confidential Information with respect to the Purpose is strictly prohibited. If copies are made, all such copies should be clearly marked as confidential, and the provisions of this Agreement shall apply to them unrestrictedly.

4. RECIPIENT shall use the same degree of care to protect the Confidential Information as RECIPIENT uses to protect its other most highly confidential information, whether of RECIPIENT or its customers, which in no case may be less than its best efforts to ensure the security of the Confidential Information. Such safeguards shall in any event include appropriate technical,

physical and procedural controls to protect such information against destruction, loss, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by RECIPIENT, whether by accident or otherwise. Such safeguards are evidenced by RECIPIENT's written record.

5. The obligations of RECIPIENT under Paragraph 3 shall not apply to any information that:
- (a) was known by RECIPIENT at or prior to the Effective Date of this Agreement, except to the extent unlawfully appropriated by RECIPIENT, such prior knowledge being evidenced by contemporaneous written evidence of same; or
 - (b) is or becomes generally known in the trade or business pertaining to such information or otherwise becomes publicly known at or after the time of disclosure by BVI, through no wrongful act of RECIPIENT and no wrongful act of any third party; or
 - (c) is received by RECIPIENT from a third party, prior to the Effective Date without restriction and without breach of this Agreement or any other agreement, and provided the information was not unlawfully obtained by the third party or by any other party it was obtained from.

The burden of establishing the existence of any of the exceptions set forth in this article 5 shall rest on the RECIPIENT.

6. Confidential Information may be disclosed, without breaching this Agreement, if such Confidential Information is required to be disclosed by a court or judicial or governmental authority of competent jurisdiction, by any applicable law, rule or regulation, and in such event, only after RECIPIENT: (i) provides prompt written notice to BVI so as to enable BVI to resist any such required disclosure and/or to obtain suitable protection regarding such required disclosure; and (ii) provides reasonable assistance to BVI in opposing or limiting the compelled or required disclosure. RECIPIENT shall make only such disclosure as is compelled or required.
7. All Confidential Information shall be deemed and shall remain the sole and exclusive property of BVI. Nothing in this Agreement shall be construed to convey to RECIPIENT any right, title or interest in or to any of the Confidential Information, or any license to use, sell, exploit, copy or further develop any such Confidential Information. Unless permitted by BVI in writing, RECIPIENT will not file any patent application, or any other intellectual property application or registration based on or incorporating (a) any of BVI's Confidential Information or (b) the results of its evaluation of BVI's Confidential Information or Samples received under this Agreement.

All information developed by any of the Parties in any way related to Confidential Information, including without limitation any feedback provided by the RECIPIENT, financial information, sales, marketing, customer information, pricing, supply, technology, intellectual property, products, manufacturing and processes, shall be deemed and shall remain the sole and exclusive property of BVI.

Upon the termination or expiration of the Parties' business relationship (including any extensions or renewals thereof), or if no such business relationship has been entered into, after the termination of the related discussions, or earlier if requested in writing by BVI, RECIPIENT will promptly redeliver to BVI, or destroy, as instructed by BVI at BVI's sole discretion, any Confidential Information, and any materials embodying Confidential Information and any copies made thereof, which the RECIPIENT or its Representatives may have made, may have access to, or may have received or possessed during the parties' discussions and/or under this Agreement and promptly

destroy and take all reasonable steps to erase all other Confidential Information in electronic form in the possession or under the control of the RECIPIENT and/or its Representatives. The RECIPIENT shall ensure that any third party to which it has disclosed the Confidential Information does the same. In addition, the RECIPIENT shall promptly deliver a written certification to BVI affirming that RECIPIENT has complied with this Section.

8. Each Party hereto represents and warrants to the other Party that it is under no obligation to any third party that would interfere with its ability to comply with the provisions of this Agreement.
9. RECIPIENT may not assign or transfer, in whole or in part, this Agreement or any of its rights, obligations or duties under this Agreement, without the express written consent of BVI, which shall not be unreasonably withheld.
10. The failure or delay of either Party to enforce at any time any provision of this Agreement shall not constitute a waiver of such Party's right thereafter to enforce each and every provision of this Agreement.
11. BVI PROVIDES, AND RECIPIENT ACCEPTS, CONFIDENTIAL INFORMATION AND OTHER MATERIALS AND INFORMATION TO RECIPIENT "AS IS" AND WITHOUT A WARRANTY OF ANY KIND. BVI EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BVI CREATES A WARRANTY OR INCREASES THE SCOPE OF A WARRANTY. UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL BVI BE LIABLE TO RECIPIENT FOR ANY DAMAGES WHATSOEVER ARISING OUT OF THIS AGREEMENT OR RELATING TO THE CONFIDENTIAL INFORMATION OR ANY OTHER MATERIALS OR INFORMATION PROVIDED TO RECIPIENT. THE RECEIPT AND USE OF CONFIDENTIAL INFORMATION AND OF ANY OTHER MATERIALS AND INFORMATION PROVIDED TO RECIPIENT IS AT THE SOLE RISK OF RECIPIENT.
12. RECIPIENT understands and agrees that there is neither an expressed nor implied expectation of any kind or type of payment or other compensation by BVI to RECIPIENT arising out of this Agreement or anything carried out under this Agreement. Nothing in this Agreement shall be construed as an obligation on BVI to disclose any of its information, including Confidential Information, hereunder.

This Agreement does not in any way bind the Parties to enter into a business relationship of any type with the other Party. It is expressly acknowledged that BVI is free to conduct any process with respect to any potential transaction or business relationship with any third party at any time, including (without limitation) by negotiating or entering into agreements with any party without prior notice to RECIPIENT and without any liability to RECIPIENT. BVI expressly reserves the right, in its sole discretion, to end or continue negotiations with RECIPIENT, at any time and for any reason and without having any obligation to determine or disclose any reason or explanation in connection therewith and without being liable to RECIPIENT for any costs or damages. For clarification purposes, it is expressly agreed between the Parties that this Agreement does not create a relationship of agency, partnership, joint venture, or license between the Parties.

13. Except in the case of Confidential Information, BVI personnel are not authorized to receive information in confidence, and all communications from RECIPIENT to BVI not relating to Confidential Information are considered to be made on a non-confidential basis.
14. Nothing contained in this Agreement, nor any course of conduct or dealing between the Parties in relation to this Agreement, the Purpose or otherwise, shall be construed, either expressly or implicitly, to grant to RECIPIENT any right or license under any patent, copyright, trademark, trade secret or other proprietary and/or intellectual property right now or hereinafter owned or controlled by BVI.
15. RECIPIENT shall not use the name of BVI, or of any director, officer, employee or agent of BVI or any adaptation thereof in any advertising, promotional or sales literature or publicity without the prior written approval by BVI or individual whose name is to be used. No public announcement or disclosure may be made by RECIPIENT with respect to the subject matter of this Agreement without the prior written consent of BVI; provided, that the provisions of this Section 15 will not prohibit: (a) any disclosure required by any applicable legal requirement (in which case the Party subject to such disclosure requirement will provide the other Party with the opportunity to review in advance the disclosure and to contest the same, including reasonable opportunity to seek a protective order or to seek confidential treatment of such disclosure), (b) any disclosure made in connection with the enforcement of any right or remedy relating to this Agreement, (c) any disclosure made by a Party to its employees, investors, potential investors, lenders and potential lenders provided the person receiving the disclosure has undertaken a confidentiality obligation substantially similar to the confidentiality obligations the Parties have undertaken to each other under this Agreement as evidenced by written record of such confidentiality obligation, or (d) any disclosure made pursuant to a press release in a form mutually agreed to by the Parties in writing (or any other subsequent disclosure containing substantially similar information).
16. This Agreement contains the entire understanding of the Parties relating to the subject matter hereof, and supersedes all prior discussions, documentation or agreements, between them relating thereto. Any modification of this Agreement shall be valid or binding on the Parties only if made in writing and signed by each of the Parties. In the event of a conflict between the terms of this Agreement and those of a Party's standard purchase order or other pre-printed commercial document, the terms of this Agreement shall prevail.
17. The term of this Agreement shall commence as of the Effective Date and, unless extended by mutual agreement of the Parties, terminate on the date occurring one (1) year from the Effective Date, unless terminated earlier by BVI at any time upon prior written notice to RECIPIENT. The obligations of confidentiality, non-use and non-disclosure set out herein shall survive the expiration or earlier termination of this Agreement for a period of ten (10) years as from the termination or expiration of the Parties' business relationship (including any extensions or renewals hereof), or if no such business relationship has been entered into, counted as from the termination of the related discussions, or (ii) until the Confidential Information becomes publicly available other than by breach of any confidentiality obligation, whichever occurs the latest. As to any Confidential Information that constitutes a trade secret, these obligations shall continue for as long as such Confidential Information remains a trade secret.
18. This Agreement shall be governed by the Commonwealth of Massachusetts without reference to any choice-of-law or conflict-of-law rules otherwise applicable. The Parties consent to and agree that the Courts of the Commonwealth of Massachusetts shall have sole and exclusive jurisdiction to resolve any interpretation, construction, breach, dispute or other controversy between the Parties in connection with this Agreement. The Parties hereby expressly waive any objection to such

exclusive jurisdiction. In the event of any dispute between the Parties, RECIPIENT will not oppose the grant of injunctive relief to BVI to ensure RECIPIENT's compliance with the terms of this Agreement. RECIPIENT also understands and agrees that RECIPIENT may be liable for damages for any breach of this Agreement.

19. RECIPIENT agrees that any material violation (whether existing or threatened) of any provision of this agreement may cause BVI irreparable injury for which it would have no adequate remedy at law, and that BVI shall be entitled to seek immediate injunctive relief prohibiting such violation, specific performance and other equitable relief, or any combination of these remedies, in addition to any other rights and remedies available to it and no proof of special damages will be necessary to enforce this agreement.

RECIPIENT will furthermore indemnify and hold BVI, its shareholders and its affiliates and the shareholders thereof ("Group Companies") harmless from and against any damages, loss, cost, or liability arising out of or resulting from RECIPIENT's or its Representatives' breach of the terms of this Agreement or any other unauthorized use or disclosure by RECIPIENT and/or its representatives of the Confidential Information.

In addition, to the extent its Confidential Information is to be considered as a trade secret, BVI shall be entitled to invoke all remedies in relation to the unlawful obtaining, using and/or disclosing of such trade secrets as set out in the relevant law or regulation.

The Parties shall have the right to enforce this Agreement in their own name and on their own behalf, or in the name of or on behalf of any of their respective Group Companies, in respect of which the provisions of this Agreement also constitute irrevocable third-party undertakings entitling the Group Companies to also enforce these provisions and this Agreement in their own name and on their own behalf.

20. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision will be severed from this Agreement, and the balance of the Agreement will remain in full force and effect. Moreover, in this case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).
21. All notices under this agreement shall be sent by registered or certified mail, postage pre-paid and addressed as follows:

For Recipient: to the address specified in the accompanying template.

For BVI: 500 Totten Pond Road, 10 CityPoint, Waltham, MA 02451

Recipient acknowledges and consents to the terms herein by clicking the box adjacent the following statement in the accompanying template: "I have read and agree to the Confidentiality Terms."