

1.2. “**EMERALD Sensor**” shall mean EMERALD’s proprietary devices including hardware, software and firmware, and communication with the rest of the EMERALD Platform._

1.3. “**EMERALD Technology**” shall mean all of EMERALD Sensor, EMERALD Platform, and EMERALD’s know-how, algorithms, processes, machine learning models, metrics, biomarkers, and Intellectual Property Rights and any supporting proprietary information and materials (whether in physical, hard copy or digital form) containing or comprising the same.

1.4. “**EMERALD Information**” shall mean any and all information and data, including without limitation the EMERALD Technology, EMERALD DATA, and ancillary data collected by EMERALD to provide the Emerald services in the performance of an SOW under this Agreement, in whatever format, whether electronically, in writing, or orally.

1.9. “**Confidential Information**” shall mean any and all non-public information regardless of form, including, without limitation, technical, developmental, marketing, sales, operating, performance, cost, know-how, business plans, business methods, process information, database information, software, algorithms, software licenses, applications, written code, logs, and graphical art disclosed to the other Party.

5. CONFIDENTIAL INFORMATION AND PUBLICATION

5.1 COMPANY Information is considered COMPANY’s Confidential Information, and EMERALD Information is considered EMERALD’s Confidential Information, with the exclusion of EMERALD DATA and SUPPORTING DATA, which are subject to section 3.4 above.

5.2. Nondisclosure of Confidential Information. All Confidential Information disclosed by one Party to the other Party or that is observed hereunder shall be maintained in confidence by the receiving Party and shall not be (a) disclosed to any Third Party except to those of its directors, officers, employees, contractors, agents, potential investors, and consultants (including accountants and attorneys) (“Representatives”), whose duties require them to have access to such Confidential Information and are bound by confidentiality and non-use obligations that are at least as stringent as those herein or (b) used for any purpose except as set forth herein, without the prior written consent of the disclosing Party, except to the extent that such Information: (i) is publicly available by public use and/or publication before its receipt from the disclosing Party, or thereafter become publicly available through no fault of the receiving Party; (ii) was already in the receiving Party’s possession prior to receipt from the disclosing Party, as evidenced by records kept by receiving Party in the ordinary course of business; (iii) is properly obtained by receiving Party from a Third Party which has a valid right to disclose such information to receiving Party, is not under a confidentiality obligation to the disclosing Party, and is not disclosing such information to receiving Party on behalf of the disclosing Party; or (iv) is developed by the receiving Party independently of Information received from the disclosing Party, as documented by the receiving Party’s business records.

5.3. Legal Exception. If a Party is required by judicial or administrative process to disclose Information that is subject to the non-disclosure provisions of this Section, such Party shall promptly inform the other Party of the disclosure that is being sought, unless such Party is legally barred from doing so, in order to provide the other Party an opportunity to challenge or limit the disclosure obligations. Information that is disclosed by judicial or administrative process shall remain otherwise subject to the confidentiality and non-use provisions of this Paragraph 5, and the Party disclosing Information pursuant to Applicable Laws or court order shall use its reasonable efforts, including reasonably assisting the non-disclosing Party in attempting to obtain an order of confidentiality, to ensure the continued confidential treatment of such Information. Information that is disclosed by judicial or administrative process shall remain otherwise subject to the confidentiality and non-use provisions set forth herein.

5.4. Confidentiality Obligation. The receiving Party shall keep confidential any Confidential Information of the disclosing Party using at least the same degree of care that it uses to protect its own Confidential Information of a similar nature, which shall be no less than a reasonable degree of care. These obligations of confidentiality and non-use shall be in effect during the Term and continue for five (5) years after the Term ends, provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under application law), such restrictions on disclosure and/or use shall survive after the Term ends for as long as such Confidential Information remains a trade secret but, in no event, shall such restrictions on disclosure and/or use cease prior to the expiration of five (5) years after the Term ends.

5.5. Disclosure Implications. Each Party understands and agrees that the material breach of this Section by a receiving Party may cause irreparable injury to the disclosing Party and that monetary damages may not provide an adequate remedy for such material breach, and both Parties hereby agree that, in the event of such a material breach by the receiving Party, the disclosing Party will be entitled to seek injunctive relief and/or specific performance, without prejudice to any other rights and remedies available for such material breach of this Agreement.

5.6. Publicity. Either Party may disclose on its website and/or other written or electronic materials the presence but not the details of this Agreement between COMPANY and EMERALD and may use the name and logo of the other Party in connection with such disclosure.