NIH SPARC DAT-CORE CONFIDENTIALITY DISCLOSURE AGREEMENT

THIS NIH SPARC DAT-CORE CONFIDENTIALITY DISCLOSURE AGREEMENT ("Agreement") is made between the Undersigned and the National Institutes of Health (NIH) (together “the Parties”) and is effective as of the date of signature below (the “Effective Date”). This Agreement must be executed by each individual prior to becoming a participating member of the SPARC Embargoed Data Sharing Group (“Participant”). A current list of all Participants will be readily accessible to all researchers funded by the NIH SPARC program (such researchers and their laboratories, “Consortium Members”).

I. BACKGROUND AND STATEMENT OF POLICY

The NIH SPARC Data Coordination Core (“DAT-CORE”) via the Blackfynn Platform (https://app.blackfynn.io) supports deposition and sharing of data, metadata, protocols, results, and other digital resources generated by Consortium Members and their unfunded project collaborators critical for the successful progression of the SPARC-funded research. All Participants have the ability to share information of a proprietary and confidential nature on the Blackfynn Platform. A Participant sharing information does so on behalf of the individual or entity who owns the information (“Owner”). A Participant may be an Owner. All Participants of the SPARC Embargoed Data Sharing Group can use the Blackfynn Platform to access proprietary and confidential information shared by other Participants.

NIH, through the DAT-CORE, shall permit access to Confidential Information available in the DAT-CORE to an individual only if the individual has certified his or her agreement to comply with the terms of access set forth herein. Membership as a Participant in the SPARC Embargoed Data Sharing Group is subject to execution of this Agreement.

II. TERMS OF ACCESS TO CONFIDENTIAL INFORMATION

(a) For purposes of this Agreement, “Confidential Information” means, subject to paragraph (c) below, all information furnished by Consortium Members and their unfunded project collaborators and shared with the SPARC Embargoed Data Sharing Group on the Blackfynn Platform, including without limitation, unpublished plans, methods, software, data, results, and findings generated from SPARC-funded research, whether developed by the Participant or furnished to the Participant by the Owner or a third party.

Participants acknowledge that one of the purposes of the Blackfynn Platform is for Participants to facilitate learning from one another with respect to the emerging field of peripheral neuromodulation. As a result, each Participant agrees that it shall generally not seek to consider as Confidential Information hereunder best experimental practices that can be applied across the SPARC-funded projects unless previously protected as a trade secret within a Participant’s or Owner’s organization prior to disclosure.

(b) All Confidential Information is and will be the exclusive property of the Owner. Participant agrees to the following obligations:

(i) Participant will not use Confidential Information for any purposes other than for his/her participation in the SPARC program.

(ii) Participant agrees not to disclose Confidential Information to parties external to the SPARC Embargoed Data Sharing Group, even if said parties are employees of the same institution or entity as the Participant or are members of the SPARC Consortium.
(iii) Participant agrees not to use Confidential Information for any commercial purposes without first executing a license with the Owner.

(iv)Participant agrees to use the same level of care in safeguarding Confidential Information that is used with Participant’s own confidential information of a similar nature, but in no event less than reasonable care.

Notwithstanding the foregoing sentences in this section, the NIH may share Confidential Information with colleagues at their respective federal organizations (including affiliates thereof) for the sole purpose of managing the SPARC program. For the avoidance of doubt, the NIH may not (i) share confidential information with research groups being considered for, or receiving, funding from such organizations, or (ii) publicly disclose any Confidential Information.

(c) Participant’s obligations of confidentiality and limited use under this Agreement do not extend to any information that:

(i) is or becomes publicly available, except through breach of this Agreement;
(ii) Participant can demonstrate that Participant possessed prior to, or developed independently from, disclosure or development under this Agreement, and was not acquired directly or indirectly from the owner of the Confidential Information;
(iii) becomes available to Participant from a third party (external to the SPARC Consortium) that, to the knowledge of Participant, is not legally prohibited from disclosing such Confidential Information; or
(iv) Participant is required by law, regulation or court order to disclose, provided that the owner of the relevant Confidential Information is promptly notified of any such requirement to allow such owning Participant to seek a protective order or other modifications to the requirement.

III. GENERAL PROVISIONS

(a) This Agreement shall expire one (1) year after the NIH SPARC program ends.

(b) This Agreement shall be governed by Federal law, as applied by the Federal Courts in the District of Columbia.

(c) If NIH determines in its sole discretion that the Undersigned has failed to comply with the terms of this Agreement, NIH may terminate the Undersigned’s access to the Confidential Information immediately and remove the Undersigned’s name from the list of Participants.

(d) Upon termination of access to Confidential Information, the Undersigned shall immediately destroy any Confidential Information copied or downloaded from the Blackfynn Platform. This provision shall survive termination of this Agreement.

(e) Each party shall be liable for any loss, claim, damage, or liability that said party incurs as a result of its activities under this Agreement, except that NIH, as an agency of the United States, may be liable only to the extent provided under the Federal Tort Claims Act, 28 USC 2671 et seq. No indemnification for any loss, claim, damage, or liability is intended or provided by any party under this Agreement.

(f) Owner shall be a third party beneficiary of this Agreement for the purpose of enforcing any terms that affect Owner’s rights in the Confidential Information.
IN WITNESS WHEREOF, I certify that as the Undersigned identified below, I agree to comply with the terms set forth in this Agreement in order to participate as a member of the SPARC Embargoed Data Sharing Group as of the Effective Date.

NAME: __________________________

SIGNATURE: ______________________

DATE: _____________________________