

FOREIGN TRADE ZONE AGREEMENT

This Foreign Trade Zone Agreement ("Agreement") is entered into, to be effective as of the ____ day of _____ ("Effective Date"), by and among Ventana Medical Systems, Inc., a Delaware corporation ("Grantee"); Pima County, Arizona ("County"); Pima County Community College District; Amphitheater School District ("Amphi"); Pima County Joint Technical Education District; and Golder Ranch Fire District (all parties other than Grantee may be referred to in this Agreement singly as a "Public Entity" or collectively as the "Public Entities" while the four Public Entities other than the County may be referred to singly as a "District" or collectively as the "Districts").

Recitals

- A. The Foreign-Trade Zones Act (19 U.S.C. § 81a-81u) authorizes the formation of foreign-trade zones and subzones for the purpose of encouraging the conduct of commercial and industrial operations in the United States that might otherwise be conducted abroad.
- B. Arizona Revised Statutes (A.R.S.) § 44-6501 authorizes the State and any county, city, town, and any public or private corporation, to apply to the U.S. Foreign-Trade Zone Board for establishment, activation and operation of foreign-trade zones and subzones within the State.
- C. Tucson Regional Economic Opportunities, Inc., an Arizona nonprofit corporation ("TREO"), is a grantee and operator of a general foreign-trade zone in Pima County, FTZ No. 174.
- D. Grantee currently operates a facility located in Pima County of the State of Arizona, at which Grantee conducts research and development, manufacturing, sales and distribution activities related to its medical diagnostics business ("Grantee's Current Operations").
- E. Grantee intends to (i) expand Grantee's Current Operations and/or (ii) establish additional research and development, manufacturing, sales or distribution activities within Pima County ("Expanded Operations"), as described on Exhibit A attached to this Agreement, all of which operations are expected to have direct and indirect economic impacts within the community, including the creation of the number of jobs described on Exhibit B attached to this Agreement. The site for the Grantee's Current Operations and Expanded Operations is within the jurisdictional boundaries of each of the Public Entities.
- F. In connection with the Grantee's Current Operations and Expanded Operations, Grantee intends to apply for establishment and activation of a foreign-trade subzone to be operated by Grantee (the "Subzone"). Grantee has asked the Public Entities to support its application (the "Application"), understanding that a showing of local economic benefit and support is essential for a successful application.
- G. Pursuant to A.R.S. § 42-12006, real and personal property that is located within the area of an activated foreign-trade zone or subzone is classified as Class Six property for purposes of taxation. While the assessed valuation for a manufacturing facility would normally be 21%, as of the Effective Date of this Agreement, the assessed valuation for Class Six property, pursuant to A.R.S. 42-15005, is 5% of the full cash value or limited valuation, as applicable (the "Reduced Assessment").

- H. The Reduced Assessment results in significantly lower primary and secondary property taxes than would otherwise be applicable, which impacts the revenues to the Public Entities, each of which relies heavily on property tax revenues for its operations. This classification also impacts the amount of state equalization assistance property tax that is levied by the County pursuant to A.R.S. § 15-994 and distributed to school districts throughout the County.
- I. The Public Entities are supportive of Grantee's Application for the Subzone, and the Public Entities and Grantee expect that the Grantee's Expanded Operations will result in economic benefits to the community.
- J. The County and the Grantee are concerned about the availability of educational funding within the County, understanding that a strong educational system is important not only intrinsically but as a component of long term sustainable economic growth and development, which benefits both the community as a whole and private business interests.

NOW THEREFORE, in light of the above facts and circumstances, the above parties agree as follows:

1. Support of Application. Each of the Public Entities agrees that it will, under the terms and conditions set forth in this Agreement, support Grantee's Application for designation, activation and continued operation of the Subzone, including (without limitation) by submitting letters in support of the designation to the proper authorities, upon request by Grantee. This will not, however, require any Public Entity to do anything that requires the expenditure of public funds, other than indirectly as salary and benefits of Public Entity employees who perform the tasks constituting the support.
2. Subzone and PILOT Fees. The Public Entities and Grantee agree that:
 - 2.1. *Extent of Subzone.* The Subzone is intended to include Grantee's Current Operations and the Expanded Operations. Notwithstanding anything in this Agreement to the contrary, Grantee shall have the right, in its sole discretion, to expand its business operations outside of the Subzone.
 - 2.2. *Recitals.* The above Recitals are incorporated into and made a part of this Agreement and constitute a portion of the consideration thereof.
 - 2.3. *PILOT Fees for Districts.* For each tax year during which the Subzone is subject to a Reduced Assessment, Grantee will pay to each District a payment in lieu of taxes fee (the "PILOT Fee") equal to the difference between (i) the sum of the primary and secondary property taxes that would be due to such District with respect to all real and personal property within the Subzone for that tax year if the Subzone was *not* subject to the Reduced Assessment; and (ii) the sum of the primary and secondary property taxes that are *actually* paid to such District with respect to real and personal property within the Subzone for that year.

As an example, and for purposes of clarification only, in the event the primary and secondary taxes that would be due to the District for a particular year calculated without regard to the Reduced Assessment equaled \$150,000, and the sum of primary and secondary property taxes that are actually paid by the Company to the District for such year

equaled \$50,000, then the Pilot Fee for such year would equal \$100,000 (\$150,000 - \$50,000).

2.3.1. Amphi agrees that it will use the PILOT Fees it receives to fund innovative educational programs within the District.

2.4. *PILOT Fee for State Equalization Tax.* For each tax year during which the Subzone is subject to a Reduced Assessment, Grantee will also pay to the County a PILOT Fee equal to the difference between (i) the amount of the state equalization assistance property tax that would be levied by the County pursuant to A.R.S. § 15-994 on all real and personal property within the Subzone for that tax year if the Subzone was *not* subject to the Reduced Assessment; and (ii) the amount of the state equalization assistance property tax that is actually paid to the County with respect to real and personal property within the Subzone for that year.

2.5. *PILOT Fees for County.* Grantee will also pay a PILOT Fee to the County, as follows:

2.5.1. Each year during the FTZ Period (as defined below), Grantee will pay to the County, subject to Section 2.5.6.:

2.5.1.1. *Real Property Fee.* A PILOT Fee with respect to real property within the Subzone equal to the difference between:

- (i) the sum of the primary and secondary real property taxes that would be due to the County (which are only Pima County Primary, County Bonds Secondary, Central Arizona Water Secondary, and Fire District Assistance), the Pima County Flood Control District and the Pima County Library District (together, the “County Entities”) with respect to all real property within the Subzone related to Grantee’s Current Operations for that tax year if the Subzone was *not* subject to the Reduced Assessment; and
- (ii) the sum of the primary and secondary real property taxes that are *actually* paid to the County Entities with respect to real property related to Grantee’s Current Operations within the Subzone for that year.

2.5.1.2. *Personal Property Fee.* A PILOT Fee with respect to all personal property within the Subzone equal to the lesser of:

- (i) \$100,000, and
- (ii) the sum of the primary and secondary personal property taxes that would be due to the County Entities for such year with respect to all personal property within the Subzone if the Subzone was *not* subject to the Reduced Assessment, minus the total primary and secondary property taxes that are *actually* paid with respect to all personal property within the Subzone for that year.

2.5.1.3. The “FTZ Period” will commence upon activation of the Subzone and continue until the difference between (i) the sum of the primary and

secondary property taxes that would have been due since commencement of the FTZ Period to the County Entities with respect to all real and personal property within the Subzone related to the Expanded Operations if the Subzone was *not* subject to the Reduced Assessment; and (ii) the sum of the primary and secondary property taxes and PILOT Fees that are *actually* paid since commencement of the FTZ Period to the County Entities with respect to all real and personal property within the Subzone related to the Expanded Operations equals, subject to Section 2.5.4., eight million two hundred thousand dollars (\$8,200,000), except that the FTZ Period shall in no event be longer than twelve (12) years. Notwithstanding the foregoing, in the year the FTZ Period expires, the FTZ Period will continue until the end of a calendar year if the date on which the FTZ Period expires occurs on any day other than December 31.

- 2.5.1.4. For purposes of this entire Agreement, real and personal property related to Grantee's Current Operations is determined as follows: (i) real property is the Grantee's land and its corresponding, then-existing capital improvements within the Subzone that are listed as real property in the County assessment roll as of the first day of the Effective Date's month, and (ii) personal property is Grantee's non-real property within the Subzone that is listed as personal property in the County assessment roll as of the first day of the Effective Date's month (together, the "Current Operations Property"). For purposes of this entire Agreement, real and personal property related to the Expanded Operations is all the rest of Grantee's real and personal property within the Subzone and listed in the County assessment roll other than the Current Operations Property.
- 2.5.2. Upon expiration of the FTZ Period, Grantee will pay to the County a PILOT Fee equal to the difference between (i) the sum of the primary and secondary property taxes that would be due to the County Entities with respect to all real and personal property within the Subzone for that tax year if the Subzone was *not* subject to the Reduced Assessment; and (ii) the sum of the primary and secondary property taxes that are *actually* paid to the County Entities with respect to all real and personal property within the Subzone for that year.
- 2.5.3. For any calendar year prior to expiration of the FTZ Period for which a report furnished by Grantee pursuant to Section 2.7 below reflects a Compliance Percentage (calculated as set forth in Exhibit B) of less than the Lower Threshold of the applicable Compliance Range (calculated as set forth in Exhibit B) for that particular calendar year as set forth in Exhibit B, Grantee will pay to the County a PILOT Fee equal to the difference between (i) the sum of the primary and secondary property taxes that would be due to the County Entities with respect to all real and personal property within the Subzone related to Grantee's Expanded Operations for that tax year if the Subzone was *not* subject to the Reduced Assessment; and (ii) the sum of the primary and secondary property taxes that are *actually* paid to the County Entities with respect to real and personal property within the Subzone related to Grantee's Expanded Operations for that year plus any PILOT Fees paid; multiplied by the Reimbursement Percentage (calculated as set forth in Exhibit B) for such year.

- 2.5.4. For any calendar year prior to expiration of the FTZ Period for which a report furnished by Grantee pursuant to Section 2.7 below reflects a Compliance Percentage more than the Upper Threshold of the applicable Compliance Range (calculated as set forth in Exhibit B) for that particular calendar year as set forth in Exhibit B, the Additional Funds (calculated as set forth in Exhibit B) up to one million eight hundred thousand dollars (\$1,800,000) shall be added to the eight million two hundred thousand dollars (\$8,200,000) set forth in Section 2.5.1.1. as of the last day of any calendar year for which such report is furnished and that new total dollar amount shall be used for all purposes hereunder.
- 2.5.5. If in the calendar year after the expiration of the first five (5) years of the FTZ Period a report furnished by Grantee pursuant to Section 2.7 reflects an Average Compensation of less than the Forecasted Compensation (as set forth in Exhibit B), the Grantee will pay to the County a PILOT Fee equal to (A) the difference between (i) the sum of the primary and secondary property taxes that would be due to the County Entities with respect to all real and personal property within the Subzone related to Grantee's Expanded Operations for that tax year if the Subzone was *not* subject to the Reduced Assessment; and (ii) the sum of the primary and secondary property taxes that are *actually* paid to the County Entities with respect to real and personal property within the Subzone related to Grantee's Expanded Operations for that year plus any PILOT Fees paid; (B) multiplied by the percentage difference between the Average Compensation and the Forecasted Compensation; and (C) reduced to no less than zero by any amount paid under Section 2.5.3. for such year. Grantee will pay the PILOT Fee as calculated above until the Average Compensation is no less than the Forecasted Compensation.
- 2.5.6. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that in no event shall Grantee be obligated to pay for a particular year (whether through a PILOT Fee or otherwise) an amount in excess of the real or personal property taxes that would have been payable to any Public Entity for such year if the Subzone was not subject to Reduced Assessment.
- 2.6. *Payment of Fees.* Within thirty (30) days following a semi-annual payment by the Grantee of its primary and secondary property taxes with respect to real and personal property within the Subzone, the County shall prepare and deliver to Grantee an invoice setting forth the amount of any Pilot Fee (for any Public Entity) for such period ("PILOT Invoice"). In the event the Grantee disagrees with the PILOT Invoice, Grantee will pay the PILOT Fee under protest, in the same manner as a taxpayer would pay disputed property taxes, and a representative of the Grantee and a representative of the County shall promptly meet to attempt to resolve such dispute. Any delay by County in sending the invoice to Grantee will not be deemed to excuse Grantee from its obligation to pay any amounts due under this Agreement upon later receipt of the invoice.
- 2.7. *Required Reports.* Grantee will provide the Public Entities with an annual report establishing to what degree Grantee has met the anticipated economic impacts set forth in Exhibit B. Each Public Entity will have the right to conduct an informal audit of the information in the Report if it so desires, and Grantee will furnish to such Public Entity the information and documentation reasonably requested by the Public Entity to conduct such audit and verify the information and calculations in the Report, either by furnishing the Public Entity with copies of such documentation or by permitting the Public Entity to inspect the documentation on-site.

3. Term. This Agreement shall terminate in whole or in part, as applicable, upon the earliest to occur of: (i) the date Grantee has notified each of the Public Entities that Grantee elects no longer to pursue its Subzone application; or (ii) the date following the granting of the FTZ on which all or part of the Subzone is no longer subject to a Reduced Assessment, as to the portion no longer subject to the Reduced Assessment.
4. Property Tax or Valuation Appeal. Nothing in this Agreement will be construed to limit the right of Grantee or any successor owner of any property within the Subzone to petition, contest or otherwise appeal the Pima County Assessor's calculation of the assessed valuation or limited assessed valuation of property within the Subzone or its property tax classification. In the event any such appeal or assessment results in a reduction in the amount of a previously paid PILOT Fee as recalculated pursuant to the provisions of Section 2 of this Agreement, Grantee shall be entitled to submit to the County and/or the Districts, as applicable, a statement setting forth a calculation of the revised PILOT Fee and the amount due to the Grantee as a refund. The County or District, as applicable, shall refund such amount to the Grantee within thirty (30) days after receipt of the statement.
5. Default/Remedies.
 - 5.1. Liability. The obligations of the Public Entities hereunder are several, not joint; neither the County nor any District will be deemed to be in default of this Agreement by virtue of a default by another of them.
6. General Provisions.
 - 6.1. *Successors and Assigns*. This Agreement will be binding on all successors or assigns of Grantee.
 - 6.2. *Compliance with Laws*. The parties shall comply with all applicable federal, state and local laws, rules, regulations, and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court in Pima County.
 - 6.3. *Non-Discrimination*. The parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this Agreement, and in the course of carrying out their duties pursuant to this Agreement the parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Agreement by reference, as if set forth in full herein.
 - 6.4. *ADA*. The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
 - 6.5. *Severability*. If any provision of this Agreement, or any application thereof to the parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect, without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable.

- 6.6. *Conflict of Interest.* This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.
- 6.7. *No Joint Venture.* It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship among the parties. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of another, including (without limitation) a party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 6.8. *No Third Party Beneficiaries.* Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.
7. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party):

Public Entities:

Pima County
130 W. Congress Street
10th Floor
Tucson, Arizona 85701

Grantee:

Patrick Watkins
Sr. Vice President, Finance and Services
1910 E. Innovation Park Drive
Tucson, AZ 85755

Pima County Community College District
4905 E. Broadway Blvd.
Tucson, Arizona 85709

Amphitheater School District
701 W. Wetmore
Tucson, Arizona 85705

Pima County Joint Technical
Education District
2855 W. Master Pieces Drive
Tucson, Arizona 85741

Golder Ranch Fire District
3885 East Golder Ranch Drive
Tucson, Arizona 85739

8. Entire Agreement. This document constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement shall not be modified, amended, altered or extended except through a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereto agree to execute this Foreign Trade Zone Agreement as of the Effective Date.

Pima County, Arizona

Ventana Medical Systems, Inc.

Chairman
Board of Supervisors

Patrick Watkins
Sr. Vice President, Finance and Services

Date

Date

Attest:

Clerk of the Board of Supervisors

Date

Approved as to Form:

Deputy County Attorney

Pima County Community College District

Amphitheater School District

Chancellor
Board of Governors

President
Governing Board

Date

Date

**Pima County Joint Technical
Education District**

Golder Ranch Fire District

Chair
Governing Board

Chairperson
Board of Directors

Date

Date

EXHIBIT A

DESCRIPTION OF EXPANDED OPERATIONS

Grantee's Expanded Operations located in Pima County of the State of Arizona, may include, without limitation, the following:

- (a) acquisition (by purchase, lease or other), construction or equipping of offices and equipment;
- (b) acquisition (by purchase, lease or other), construction or equipping of research and development, manufacturing, sales or distribution buildings and facilities and equipment;
- (c) expansion, renovation, rehabilitation or equipping of existing offices, facilities, research and development, manufacturing, sales and/or distribution buildings and facilities and equipment; and/or
- (e) acquisition (by purchase, lease or other), construction, expansion, renovation, rehabilitation or equipping of any functionally related or similar buildings and facilities and equipment;

which is anticipated as of the date of this Agreement to result in the Anticipated Economic Impacts described in Exhibit B attached hereto.

EXHIBIT B

ANTICIPATED ECONOMIC IMPACTS

Anticipated New Company Jobs from Expanded Operations in Pima County:

<u>Date</u>	<u>Aggregate Number</u>	<u>Compliance Range</u>
By December 31, 2011	100	±30%
By December 31, 2012	200	±20%
By December 31, 2013	300	±15%
By December 31, 2014	400	±15%
By December 31, 2015	500	±10%
As of January 1, 2016 and thereafter	500	±10%

The average annualized W-2 compensation for jobs utilized in Grantee's Current Operations and Expanded Operations in Pima County ("Average Compensation") will be no less than one hundred seventy-five percent (175%) of the U.S. Bureau of Labor Statistics' Occupational Employment Statistics May 2009 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates for the Tucson, Arizona Occupation Code 00-0000 Mean Annual Wage Estimate ("Forecasted Compensation").

*For purposes of this Agreement, "New Company Jobs" means (i) the aggregate job positions at the Grantee's Current Operations and Expanded Operations as certified by the Grantee to constitute full-time or full-time equivalent employees and who are employed by (a) the Grantee and (b) any subsidiary or affiliate of the Grantee; minus (ii) the current level of employment at the Grantee's Current Operations of nine hundred eighty-seven (987) ("Base Company Jobs").

For purposes of calculating any PILOT Fee that may be payable under Section 2.5.3 of this Agreement, "Reimbursement Percentage" shall be calculated for a particular calendar year as a percentage determined as 100% minus the Compliance Percentage for such year. The "Compliance Percentage" shall be calculated for each year as a fraction, expressed as a percentage, the numerator of which shall be the New Company Jobs for such year and the denominator of which shall be the Anticipated New Company Jobs for such year as set forth in this Exhibit B. As an example and for purposes of clarification only, if as of December 31, 2013 there are 210 New Company Jobs, the Compliance Percentage for such year would be 70% ($210 \div 300 = 70\%$) and the Reimbursement Percentage would be 30% ($100\% - 70\% = 30\%$).

The "Lower Threshold" shall be calculated for a particular calendar year as a percentage determined as 100% minus the Compliance Range as set forth in this Exhibit B. The "Upper Threshold" shall be calculated for a particular calendar year as a percentage determined as 100% plus the Compliance Range as set forth in this Exhibit B. The "Additional Funds" shall be calculated for a particular calendar year as ten thousand dollars (\$10,000) based on each additional head count, rounded up, in excess of the Upper Threshold. As an example and for purposes of clarification only, if as of December 31, 2011 there are 140 New Company Jobs, the Compliance Percentage for such year would be 140% ($140 \div 100 = 140\%$), the Upper Threshold would be 130% ($100\% + 30\% = 130\%$), the additional head count, expressed as number of persons in excess of the Upper Threshold, would be ten (10) ($140 - (130\% \times 100) = 10$), and the Additional Funds would be one hundred thousand dollars \$100,000 ($10 \times \$10,000$).