

**Mutual
Non-Disclosure
and
Non-Circumvention Agreement**

by and between



hystrix medical AG, Bahnhofstrasse 47, CH-4900 Langenthal

(hereinafter the "**HMAG**")

and

(hereinafter the "**Company**")

(HMAG and the Company each referred to as "**Party**"
and jointly the "**Parties**")

1. Background

The Parties have agreed to collaborate across a number of transactions that have specific regard to the use of the services of HMAG's online and offline platforms for medical products www.hystrixmedical.com (hereinafter the "**Evaluation**"). In connection with the Evaluation the Parties will provide information to each other in which the disclosing Party has a confidentiality

interest (hereinafter each receiving party referred to as "**Receiving Party**" and each disclosing party referred to as "**Disclosing Party**"). Therefore, the Parties conclude this non-disclosure agreement (hereinafter the "**Agreement**").

2. Confidential Information

All information, presentations, handouts, computer programs (or parts thereof), codes, tools, as well as all documents and documentation of whatever kind and origin (in particular also oral information), which the Disclosing Party discloses, transfers or otherwise makes accessible to the Receiving Party in the context of the Evaluation and/or a collaboration, or which the Receiving Party can take note of, is information which, in accordance with the provisions of this Agreement must be kept confidential (hereinafter the "**Confidential Information**"). This includes, in particular, all information regarding product planning, product development, product design, technical data, information on costs, prices, customer or supplier names, information on financial conditions, marketing strategies, operating methods, intellectual property (such as patents, copyright or trademarks) as well as any know-how.

No Confidential Information is information,

- which is generally known or becomes known, without breach of this Agreement by the Receiving Party;
- where the Receiving Party can prove that it was already rightfully in possession of it prior to signing of this Agreement;
- where the Receiving Party can prove that it has developed it independently of the Confidential Information; and
- where the Receiving Party can prove that it has rightfully received it from a third party who is entitled to disclose them.

3. Use of Confidential Information

The Receiving Party undertakes not to use the Confidential Information either for itself or for any third party or to disclose or make it accessible to any third party wholly or in part, unless permitted by this Agreement, by a subsequent collaboration agreement or by the written consent of the Disclosing Party.

The Receiving Party further undertakes to keep the Confidential Information confidential and to make it accessible to the members of the management, executive employees, employees and advisors of the Receiving Party only if they must know it in the context of the Evaluation. The Receiving Party undertakes to conclude a non-disclosure agreement with them before making Confidential Information accessible to them and the Receiving Party shall together with such

person be jointly and severally liable to the Disclosing Party for any breach of confidentiality by such person – in the event of sharing with other intermediaries. The Receiving Party keeps a list that provides for the persons with whom it has concluded such additional non-disclosure agreements and what Confidential Information has been made available. This list must be disclosed to the Disclosing Party at any time.

In the event that the Receiving Party is ordered to disclose any of the Disclosing Party's Confidential Information pursuant to a judicial or government request, requirement or order, the Receiving Party shall promptly notify the Disclosing Party, if reasonably possible under the circumstances, thereof and take any and all reasonable steps to assist the Disclosing Party in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect the Disclosing Party's rights prior to forced disclosure.

Neither Party shall create the impression with or lead any third party to interpret or construe, that this Agreement is an agency agreement and/or partnership agreement and/or a joint venture and/or any other similar arrangement;

4. No Representations

The Disclosing Party does not provide for any representations (e.g. regarding completeness or correctness) regarding the Confidential Information.

5. Property and Intellectual Property Rights

All documents and data carriers on which Confidential Information has been recorded or stored, or which the Receiving Party receives from the Disclosing Party on the basis of this Agreement, remain property of the Disclosing Party.

All existing intellectual property rights regarding the Confidential Information remain fully with the Disclosing Party. By communicating or providing access to the Confidential Information, the Receiving Party shall not obtain any rights of use to any intellectual property rights.

6. Non-Circumvention

The Receiving Party shall not at any time without the prior written consent of the Disclosing Party contact, solicit or attempt to solicit or engage in any business deals, arrangements or contracts with the Disclosing Party's clients, service or product suppliers, directors, shareholders, members, trustees, beneficiaries, associates, agents, advisors, consultants, business associates, partners, investors, employees, and any potential clients even if not yet contracted,

or in any other way compete with the Disclosing Party or the aforementioned parties or in any way try to the aforementioned parties in any way whatsoever.

The Receiving Party shall not directly or indirectly circumvent, avoid, bypass or preclude the Disclosing Party in any transactions that the Receiving Party elects to enter and in any dealings (part, present or future), with any party so introduced to the Receiving Party by the Disclosing Party.

7. Duration

This Agreement shall enter into force upon signing of all Parties for an indefinite period. It may be terminated in writing by each Party upon eighteen months' notice per the end of the respective month. The obligations to maintain confidentiality and the corresponding provision relating to the non-circumvention and liquidated damages remain in force after the termination of this Agreement for an indefinite period of time.

8. Obligation of Return

Upon termination of this Agreement, the Receiving Party undertakes to return immediately all written documents and data carriers on which Confidential Information has been recorded or stored and which it has received from the Disclosing Party. The Receiving Party must also destroy all other documents or data carriers on which Confidential Information is recorded or stored. The Receiving Party will immediately confirm the destruction or deletion of the Confidential Information in writing to the Disclosing Party.

9. Liquidated Damages

If the Receiving Party breaches the provisions of this Agreement, it must pay to the Disclosing Party a penalty of CHF 100,000 per contract breach. The rescission of this Agreement and/or the assertion of further damages shall be reserved. The payment of liquidated damages does not release the Receiving Party from the fulfillment of its contractual obligations. In particular, the right of the Disclosing Party to demand the removal of the condition contrary to the terms of this Agreement shall be reserved. This clause 7 shall also apply after the termination of this Agreement for each breach of the confidentiality obligation under this Agreement

10. Right to Interdictory Relief

The Receiving Party recognizes that the unauthorised disclosure of Confidential Information may give rise to irreparable injury and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, the Disclosing Party has the right to seek injunctive relief, as well as such relief as may be available at law or in equity, to prevent the unauthorised disclosure of its Confidential Information, without the necessity of having to prove actual damage, and notwithstanding that in any particular case damages may not be quantifiable, and the Receiving Party may not plead sufficiency of damages as a defense in any proceedings for injunctive relief. This clause shall not limit the Disclosing Party's rights to claim any damages or to enforce any such other relief that may be occasioned by any breach of this Agreement.

For all purposes of or arising out of this Agreement including, without being limited to, the serving of any process, the Parties respectively choose domicilium citandi et executandi ("**Address**") at the physical address set out in this Agreement, provided that a Party may change its Address at any time to another address which is not a post office box or poste restante with written notice to the other Party.

11. Notices clause

Any notice that is required to be given in terms of this Agreement may be given:

- a. by hand during ordinary business hours at a Party's Address in which case it shall, unless the contrary is proven, be deemed to have been received when so given;
- b. by pre-paid registered priority mail to the Party's postal address given in this Agreement in which case, it shall, unless the contrary is proved, be deemed to have been received 10 (ten) business days after it was so posted, provided that a written notice so posted which is simultaneously sent by e-mail to a Party's chosen e-mail address shall, unless the contrary is proven, be deemed to have been received within three ordinary business hours after it was so e-mailed;
- c. Any written notice sent or transmitted in any other way and of which the addressee acknowledges receipt in any way whatsoever, shall nonetheless be a valid notice in terms of this Agreement.

12. Entire Agreement

This Agreement contains all agreements regarding the object of this Agreement. Neither Party shall be bound by any undertakings or representations or warranties not recorded herein or in a subsequent written document signed by both Parties. All changes, variations, additions or

supplements shall be made exclusively in writing, with a reference to this Agreement and signed by both Parties or their fully authorised representatives.

13. Final Provisions

- a) The nullity or invalidity of individual provisions of this Agreement shall not affect the validity of the remaining provisions. The ineffective or void provisions shall be interpreted in such a way that the intended economic purpose is achieved. If such an interpretation is not possible, the Parties are obliged to make an agreement that comes as close as possible to the economic purpose of the invalid or void provision.
- b) This Agreement shall be binding upon the Parties hereto, their successors hereto, their successors-in-title, any entity that comes to possess the Confidential Information as a result of any corporate restructuring, administrators, executors and heirs.
- c) Neither Party shall be entitled to cede or assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
- d) If rights and obligations under this Agreement are not immediately enforced by one Party, this shall not be deemed a waiver of subsequent assertion of these rights or adaptation of the Agreement.

14. Governing Law and Jurisdiction

This Agreement shall be governed by Swiss substantive law without giving effect to the conflict of law principles and bilateral and multilateral agreements.

The court of jurisdiction is Zurich 1, Switzerland.

[Signatures on the following page]

*The undersigned hereby acknowledge and attest to their authority to sign on behalf of their respective organisations. Should additional signatories be required to ensure the binding nature of this agreement, the Parties are to immediately advise hystrix medical AG to ensure any such required additional individuals are added to this Agreement.

hystrix medical AG

Place and date

Philippe Hügli

Jonathan Campbell

Company Name:

Place and date

[name of authorized signatory/signatories]

Place and date

[name of authorized signatory/signatories]