

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is made on the **[DD MM 202X]**

BETWEEN

1. **Dornier MedTech Systems GmbH** a company duly incorporated in Germany and having its registered office at Argelsrieder Feld 7, D-82234 Wessling, Germany ("**DMTS**"); and

Dornier MedTech Laser GmbH a company duly incorporated in Germany and having its registered office at Argelsrieder Feld 7, D-82234 Wessling, Germany ("**DMTL**") of the one part;

AND

2. **[Insert company name XXX]** a company duly incorporated in **[Germany/Insert Country]** and having its address at **[Street/Location]**, (hereinafter as **[xxx]** of the other part)

DMTS, DMTL and **xxx** shall hereinafter be referred to individually as "Party" and, collectively, as "Parties"

WHEREAS,

- A. **DMTS** and **DMTL** designs and manufactures medical technical equipment and devices whilst **xxx** provides **yyy**.
- B. **DMTS** and **DMTL** are considering to engage **xxx** to provide **yyy** ("**Purpose**") and Parties may disclose certain of its confidential information to the other for this Purpose.
- C. The Parties wish to regulate how such confidential information is to be treated while they are in the possession or control of the Receiving Party.
- D. **xxx** is also aware that **DMTS** and **DMTL** may engage in negotiations or discussions with other companies which may or may not be competitors to **xxx** with regard the same Purpose.

In respect of each piece of confidential information, the Party who is in receipt of that piece of confidential information shall hereinafter be referred to as the "Receiving Party" and the Party who discloses that piece of confidential information shall hereinafter be referred to as the "Disclosing Party".

IT IS HEREBY AGREED as follows:

1. CONFIDENTIAL INFORMATION

1.1 The term "Confidential Information" for the purpose of this Agreement shall mean any and all confidential information in connection with the Purpose disclosed, furnished or communicated by or on behalf of the Disclosing Party to the Receiving Party or a third party acting on its behalf including but not limited to all documents, notifications, knowledge, intellectual property rights, economic, technical or scientific know-how and data in particular, budgetary information, quotations, prices, commercial documentation, customer information, business plans, and information in relation to development, documentation and production requirements, irrespective of whether in any physical, written or oral or information reduced to tangible form and also includes information communicated or obtained through meetings, exchange of sight of documents, presentations, exhibits, telephone calls or correspondence between the Parties.

1.2 "Confidential Information" shall not include any information which is:

- (i) already in the possession of or known to the Receiving Party prior to disclosure by the Disclosing Party and not in breach of any confidentiality obligation;
- (ii) in or becomes part of the public domain through no fault of or breach of this Agreement by the Receiving Party or its Representatives;

- (iii) received by the Receiving Party without restriction or any obligation of confidentiality from any third party;
- (iv) independently developed prior to this Agreement by the Receiving Party whether on its own or jointly with a third party or third parties;
- (v) approved for release or use by written authorisation of the Disclosing Party; or
- (vi) required to be disclosed by any law, judicial order or decision or regulation or rule of any governmental or regulatory authority.

2. OBLIGATION OF CONFIDENTIALITY

2.1 In consideration of the disclosure and release of the Confidential Information by or on behalf of the Disclosing Party to the Receiving Party, the Receiving Party hereby agrees and undertakes:

- (a) to hold and keep in confidence any and all such Confidential Information and not to disclose the Confidential Information or any part thereof to any third party except to only such of its directors, officers, employees, consultants, agents, advisers, lenders, vendors (collectively, "Representatives" and each a "Representative") and the Receiving Party's holding company or subsidiary company(ies) ("Affiliates"), if applicable, and their Representatives whose duties require them to possess or consider the Confidential Information and strictly on a "need to know" basis only, and who have agreed to abide by non-disclosure terms at least as comprehensive as those set forth herein or who are obliged to professional secrecy;
- (b) to use the same degree of precaution as it would use to protect its own confidential information of like importance but in no event less than reasonable care; and
- (c) not to use the Confidential Information, in whole or in part, for any purpose other than the Purpose.
- (d) Disclosure of information to third parties who are contractors or subcontractors of the Disclosing Party (e.g., toolmakers) for the procurement of aids (e.g. tools) in connection with the Purpose is permitted. A Confidentiality Agreement must be concluded with these third parties.

2.1 The Receiving Party acknowledges and agrees that it shall be responsible for any breach of the terms of this Agreement by any of its Representatives and shall take all reasonable measures (including but not limited to court proceedings) to restrain such Representatives from prohibited or unauthorized disclosure or use of the Confidential Information.

2.2 Where the Receiving Party receives personal data, the Receiving Party shall use such data exclusively for the Purpose contemplated herein and shall comply with all applicable provisions and laws relating to data protection. In the event of any legal proceedings instituted against the Disclosing Party on account of any infringement of data protection laws, the Receiving Party shall indemnify the Disclosing Party for any and all costs which may be incurred by the Receiving Party thereof.

3. DISCLOSURE DUE TO COURT ORDER OR GOVERNMENTAL ACTION

3.1 In the event that the Receiving Party or any of its Representatives is obligated or requested to disclose any Confidential Information as a result of a court order or by any governmental or regulatory authority, the Receiving Party shall immediately inform the Disclosing Party so that the Disclosing Party is given the opportunity to object to such disclosure. Should any such objection by the Disclosing Party be unsuccessful or should the Disclosing Party decide not to object to any such disclosure, the Receiving Party or the Representative so obligated or requested to disclose the Confidential Information may disclose only such Confidential Information to the extent required by the relevant court order or governmental or regulatory authority.

4. NO PUBLICITY

4.1 The Parties agree that this Agreement and its terms are confidential in nature and shall not be disclosed to any third party without the prior written consent of both Parties. Further, no Party may, without the prior written consent of the other Party, disclose to any third party about the possible co-operation contemplated between

the Parties including but not limited to the fact that discussions or negotiations are taking place between the Parties, any terms, conditions, facts or other matters with respect thereto and the status thereof.

4.2 No release or announcement to the press, whether oral or in writing, relating to any matter contemplated under this Agreement shall be made unless both Parties mutually agree in writing and only at such time and in such form as is approved by the Parties.

4.2 However, nothing herein shall prevent any Party from disclosing any Confidential Information to the extent required in or in connection with any legal proceedings arising out of this Agreement.

5. NO CONTRACTUAL OBLIGATION

5.1 For the avoidance of doubt, nothing contained herein shall compel or oblige any Party:

(a) to provide to other Party with all or any Confidential Information requested by the other Party and that each Party shall be entitled at its discretion to decline to supply the other Party with any part of such information; or

(b) to enter into the transaction(s) contemplated hereunder with the other Party.

6. RETURN OF CONFIDENTIAL INFORMATION

6.1 All written Confidential Information or any part thereof (including without limitation, information incorporated in computer software or held in electronic storage media), shall remain the property of the Disclosing Party from which it originates, and the Receiving Party shall, and shall procure that its Representatives shall, return all written Confidential Information to the Disclosing Party or destroy all such Confidential Information immediately upon receipt of the written request by the Disclosing Party to do so, and immediately cease using all Confidential Information of the Disclosing Party; **PROVIDED THAT** such obligations to return or destroy shall not apply to such Confidential Information that the Receiving Party or any of its Representatives are required by law or professional regulations to retain, provided further that the confidentiality obligations contained in this Agreement shall continue to apply to such Confidential Information that is retained.

7. NO LICENCE

7.1 Nothing herein contained shall be construed as granting to the Receiving Party and the Receiving Party shall not acquire any license or right to use the Confidential Information other than for the Purpose or any license under or rights to any patent, copyright or other intellectual property.

8. NO WAIVER

8.1 No failure to exercise or delay in the exercise any right or remedy vested in a Party under or pursuant to this Agreement shall constitute a waiver of the right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy available.

9. REMEDY

9.1 The Receiving Party shall reimburse the Disclosing Party for any costs, claims, demands or liabilities of whatsoever nature as awarded by court of competent jurisdiction, arising directly out of a breach, or threatened breach of the Receiving Party obligations under this Agreement. Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to them, either at law or in equity, for such breach or threatened breach including specific performance or injunctive relief from any court in any jurisdiction in addition to all other remedies available to it.

10. AMENDMENTS

10.1 Any and all amendments or modifications to this Agreement must be written and signed by the authorized representatives of the Parties.

11. SEVERABILITY

11.1 In the event that any clause or part of a clause in this Agreement shall for any reason, be determined by a court or arbitral tribunal to be invalid or unenforceable then the remaining clauses and remaining parts of the clauses shall not be affected, impaired, or invalidated, and shall remain in full force and effect and shall continue to be binding upon the Parties.

12. ARBITRATION

12.1 Any and all disputes arising out of or relating to this Agreement shall be referred to and finally resolved by arbitration in Germany in accordance with such Arbitration Rules as may be applicable in Germany for the time being in force which rules are deemed to be incorporated by reference into this clause. All proceedings shall be conducted in the English Language unless otherwise agreed by the Parties.

13. GOVERNING LAW

13.1 This Agreement shall be governed and construed in accordance with the laws of Germany.

14. EXPIRY AND TERMINATION

14.1 This agreement shall be valid for a period of two (2) years from the date stated hereof.

14.2 Either Party may terminate this Agreement at any time by giving the other a notice in writing of not less than thirty (30) days.

14.3 The Parties agree that clause 2, 3, 4, 7 and those other clauses which by their terms are intended to survive termination or expiry, shall continue in force in accordance with their terms, notwithstanding the termination or expiry of this Agreement for any reason, unless or until such time as all Confidential Information disclosed herein have become publicly known and made generally available.

15. PREVAILING VERSION

15.1 This Agreement is signed in English and German languages and both language versions shall be equally valid. In the event of inconsistency between the English and German language versions and for the purpose of the discussion or settlement of any dispute arising out of or in connection with this Agreement, the English version shall apply.

The Parties hereby set their respective hands on the date and year first above written.

Signed for and on behalf of **Dornier MedTech Systems GmbH**

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Wong Yau Chung
Chief Operating Officer

.....
Dr. Andreas Lutz
Prokurist

Signed for and on behalf of **Dornier MedTech Laser GmbH**

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Wong Yau Chung
Chief Operating Officer

.....
Dr. Andreas Lutz
Prokurist

Signed for and on behalf of **xxx**

.....
Name:
Title: