

MSC MEMBERSHIP AGREEMENT

between

Medsteps AG
Dorfplatz 6
6330 Cham
Switzerland

– hereinafter "**Medsteps**" –

and

Name
Street
Post Code, City
Country

– hereinafter the "**Member**" –

Medsteps and the Member shall also hereinafter be referred to individually as "PARTY" and jointly as "PARTIES".

PREAMBLE

Medsteps is a company having its headquarters in Cham, Switzerland, and aims to engage in the research, development and licensing of medical services. As part of such activities it has developed a special treatment concept for surgically treating migraines, which it provides and also makes available to third parties under the trademark „msc MIGRAINE-SURGERY-CENTRE“. That concept represents an integrated solution for the execution of all medical, administrative and communicative issues of the surgical migraine therapy. The solution contains confidential technical and conceptual knowledge (know-how). Part of the solution, in particular, is a website and a web-based administration tool. Medsteps is prepared to grant the Member the necessary rights to use its migraine treatment concept including the know-how, trademark, website und administration tool for use, on a non-exclusive basis.

The Member is, in his country, an accredited doctor, specializing in the field of plastic surgery. He is interested in acquiring the necessary rights to use the treatment of migraines with all further components in order to be able to treat his patients on his own authority.

Therefore the parties have agreed the following:

**PART A –
DEFINITIONS**

- 1.1 **msc Membership.** “msc Membership” shall mean the assumption of all obligations by and the grant of all rights under this contract to individuals, corporate or unincorporated bodies (hereinafter members), including in particular the provision of and access to the web portal (as specified in part B) and the right to use the know-how (as specified in part C) and the trademark (as specified in part D). This msc Membership does not create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between the PARTIES. msc Membership requires a membership fee according to section 12.
- 1.2 **Contractual Trademark.** “Contractual trademark” shall mean the figurative mark „msc MIGRAINE-SURGERY-CENTRE” protected through registration under registration number 007 445 109 in the register held at the Office for Harmonization in the Internal Market (OHIM) in Alicante (graphical representation in Annex 1) and under the registration number 4144700 in the register held at the United States Patent and Trademark Office (USPTO) in Alexandria, Virginia.
- 1.3 **Contractual products.** “Contractual products” shall mean any products for which the Member, on account of the rights granted under this contract, may use the contractual trademark in accordance with the provisions of this membership agreement, namely:
- the individualised website www.migraine-surgery-centre.com
 - the administration tool www.office.migraine-surgery-centre.com, consisting of msc patient management, msc data management, msc analytics and msc helpdesk
 - the 3-D Migraine-Head-Model
 - customised surgical instruments
 - msc migraine video
 - msc migraine compass
 - msc migraine questionnaire
 - pre- and postoperative videos
 - all videos available on the website
 - msc injection navigator
 - google adwords tool kit

- iPad/iPhone and Android apps
 - the know-how (part C)
- 1.4 **Member’s territory.** “Member’s territory” shall mean *[specify exact Member’s territory in individual case]*.
- 1.5 “Business area” shall mean the provision of an integrated surgical treatment for migraine patients in accordance with the treatment and operation methods developed by Medsteps.

PART B - WEBSITE

- 2.1 **Web portal.** Medsteps shall, at the website address www.migraine-surgery-centre.com, set up a web portal in the official language of the Member’s territory, on which patients can learn about the migraine treatment (hereinafter the “**PORTAL**”). The PORTAL shall, in addition to general information on migraines, contain information on the treatment method developed by Medsteps and the treatment process and an online questionnaire which the patient must fill out prior to treatment. With regard to the rest of the content of the PORTAL, Medsteps shall have free rein. The PARTIES agree that patient contact must be via the PORTAL and that patient consultations on the migraine treatment may only take place once the questionnaire has been properly filled out in full and submitted. Patients who have contacted the Member in accordance with this section 2.1 for the purposes of migraine treatment shall hereinafter be the “**PATIENTS**”.
- 2.2 **Legal conformity.** Medsteps shall ensure that all legal requirements in accordance with Swiss law regarding the running of the PORTAL are met. The legal conformity of the PORTAL with the legal systems of other countries shall not be guaranteed by Medsteps. The Member must inform Medsteps immediately of any possible statutory breaches according to the law of other countries currently in force, where the Member is aware of them or must be aware of them. The Member shall not be entitled to make changes to the contents of the PORTAL and/or copy or use in any other way the PORTAL or its contents in full or in part.
- 2.3 **Identification.** Upon conclusion of this contract, Medsteps shall display the full name of the Member and the business address of the Member, with the street and city, on the PORTAL for the term of this contract and allow third parties the opportunity to inspect that information. The Member hereby expressly agrees thereto. The Member must inform Medsteps immediately in writing of any changes to his business address.
- 2.4 **Databases.** A database system is linked to the PORTAL. The Member shall have access to the database system called “Migraine Surgery Office” only to the extent that access has been

granted to him by Medsteps. The Member shall not have any further rights thereto. The Member shall have free access to the database system called "OFFICE" within the limits of the rights to which Medsteps, in connection with that system, is entitled. The Member undertakes to collect and manage the contact details of his PATIENTS with the OFFICE system and to integrate all information relating to the treatment into the OFFICE system. Medsteps may utilize such information in anonymous form for statistical purposes.

PART C - KNOW-HOW

- 3.1 **Know-how.** Medsteps has confidential knowledge regarding the treatment and operation methods for migraine patients developed by it. That knowledge consists, in particular, of a specific treatment process, the treatment experience of Medsteps and the operations techniques for migraines developed by Medsteps ("KNOW-HOW").
- 3.2 **Right to use.** Medsteps hereby grants the Member a non-exclusive right, for the term of this contract, to use the KNOW-HOW within the Member's territory.
- 3.3 **Obligation of confidentiality.** The Member undertakes to keep all information exchanged prior to or to be exchanged during the term of this contract and any knowledge acquired on basic principles, the improvement and use and other details regarding the KNOW-HOW confidential, even if it is not expressly labelled as secret or confidential. The obligation of confidentiality shall not apply to information which the Member proves was, without any action on its part, already in the public domain when this contract was concluded or was made known by third parties. It shall also not apply to information which the Member already had in its possession prior to its disclosure by Medsteps. In such a case, the Member shall inform Medsteps immediately that he was already aware of the information in full or in part.
- 3.3 **Employees.** The Member shall also impose that obligation of confidentiality on all of his employees as well as external third parties who, on account of their activities, can obtain usable knowledge of the KNOW-HOW and/or information connected to the KNOW-HOW. The Member also undertakes to continue to bind any employees who leave the company to confidentiality concerning the information obtained regarding the KNOW-HOW.
- 3.4 **Contractual penalty.** In the event than the Member breaches the obligation of confidentiality intentionally or through negligence, Medsteps shall be entitled to claim compensation of up to CHF 100 000 for each breach of the provisions of sections 3.1 and 3.2 of this contract to the exclusion of continuation of offence, which shall be due for payment immediately. The right to claim for higher damages shall remain thereby unaffected.

- 3.5 **Post-contractual confidentiality.** The obligation of confidentiality shall also continue to apply for a period of 10 years after this contract has ended.

PART D – TRADEMARK USE

4. Right to use the contractual trademark

- 4.1 Medsteps hereby grants the Member the basic right to use the contractual trademark in the Member's territory for the contractual products for the term of this contract. That right is non-exclusive. The Member shall be entitled, in particular,

- (i) to use the contractual trademark in commercial documents or in advertising for the business area;
- (ii) to offer and provide the business area activities under the contractual trademark.

- 4.2 Medsteps guarantees that it is authorized to grant that right to use the contractual trademark in accordance with the following provisions.

5. **Sub-interests.** The granting of sub-interests in the msc Membership shall not be permitted.

6. **Transfer.** The Member shall not be entitled to completely or partially transfer the rights to the contractual trademark to third parties and/or give these rights conferred upon him by this agreement as security or as the object of any other rights in rem. Further, the Member shall not be entitled to transfer this contract or parts thereof without the prior consent of Medsteps.

7. The Member's obligations

- 7.1 The Member undertakes to use the contractual trademark only in the registered format in accordance with **Annex 1** of this agreement and only for the contractual products. In particular, the Member must use the contractual trademark in the colour scheme as shown in Annex 1.

- 7.2 For the purposes of this contract, use of the contractual trademark in any format which deviates from the registration shall not count as a permitted form of use within the meaning of this contract even if the deviations do not change the distinctive character of the contractual trademark.

- 7.3 The Member shall not be entitled, without the prior written consent of Medsteps, to apply for and/or register trademarks, designs, the right to use granted under this agreement or other

rights in connection with the contractual trademark and/or the contractual products and/or arrange for the application and/or registration in any other way, neither in the Member's territory nor elsewhere. The Member shall have no entitlement to the granting of Medsteps' consent. Medsteps can make consent for registration of such rights subject to their being registered in its name. Any rights applied for or registered in favour of the Member in connection with the contractual trademark and/or contractual products may in no way be exercised against other members of Medsteps.

- 7.4 Should the Member breach the obligations in section 7.3, Medsteps shall, in addition to compensation and other entitlements set out in this contract, also be entitled to the prompt transfer of rights applied for, registered or which otherwise exist to Medsteps at the Member's costs.

8. Social Media

- 8.1. Medsteps encourages the Member to set up and maintain dedicated msc MIGRAINE-SURGERY-CENTRE social media presences for example on Facebook, Twitter and Instagram and/or to integrate the migraine surgery business area into the Member's existing social media presences.
- 8.2. The Member is granted the basic right to use the contractual trademark on the member's social media websites given that the Member provides the following on each of the Member's social media presences:
- (i) The contractual trademark exclusively in combination with the Member's territory, that is "msc MIGRAINE-SURGERY-CENTRE [*specify exact Member's territory in individual case*]"
 - (ii) A corresponding web link to the PORTAL.
- 8.3. The Member must notify Medsteps upon the set up of any dedicated msc MIGRAINE-SURGERY-CENTRE social media presences.
- 8.4. Medsteps will include web links on the PORTAL to the Member's dedicated social media presences.
- 8.5. Section 14.4 applies accordingly.

9. Advertisement of the PORTAL

- 9.1. The member is obliged to target any advertising of the PORTAL and/or online links to the PORTAL directly to migraine-surgery-centre.com or migraine-surgery-center.com. The respective domain has to be explicitly named. The same applies accordingly for all activities taking place in offline media, e.g. print media, radio or TV involved in advertising the PORTAL.
- 9.2. Deviations from 9.1. require the written approval of medsteps.

10. Trademark protection

- 10.1 Medsteps must maintain the contractual trademark, in particular by extending the term of protection of the contractual trademark. The fees and costs relating to the maintenance of the contractual trademark, in particular the fees of the competent trademark authorities and any lawyer's fees or patent attorney's fees or costs of trademark agents or other representatives shall, subject to the following provisions, be for Medsteps' account.
- 10.2 Medsteps and the Member shall inform each other immediately of all infringements of the contractual trademark. The Member must support Medsteps, in an appropriate way, in defending the contractual trademark.
- 10.3 Medsteps reserves the right to bring judicial and extrajudicial proceedings against infringers as a matter of principle. In the event that Medsteps is not prepared to bring or interested in bringing proceedings against an infringer, the Member shall be entitled, but not obligated, to bring action against the infringement of the contractual trademark, subject to consent from Medsteps, in his own name. Medsteps may withhold such consent only on important grounds. If requested to do so Medsteps must issue the Member with written authorization, if the Member is entitled to exercise the rights from the contractual trademark in his own name in accordance with this contract.
- 10.4 The costs for the execution of infringement disputes shall be for the account of the party which, according to this contract, exercises the rights from the contractual trademark.

11. Transfer of rights acquired through usage

Where the Member has acquired his own trademark rights or other rights on the grounds of his use of the contractual trademark and/or the contractual products in the course of trade, the Member must transfer such rights, acquired through usage, to Medsteps immediately and without compensation.

**PART E -
MEMBERSHIP FEE**

12.1 **Membership Fee.** In return for Medsteps’ services according to parts A through D of this contract, the Member shall pay a monthly amount of CHF 950 plus any statutory VAT due, during the term of this contract, payable in each case in advance no later than the first day of the month concerned.

12.2 **Payment terms.** Payments pursuant to section 12.1 shall be made to the following bank account of Medsteps in full without deductions, with the reference “Membership fees for the month [...]”. Any fees which may accrue in the transfer process of the member's bank are at the expense of the Member.

St. Galler Kantonalbank
Bahnhofstr. 10
9430 St. Margarethen
Schweiz

BIC: KBSGCH22
IBAN:

Medsteps’ VAT number is: CHE-282.606.173 MWST.

12.3 **Costs and fees.** Costs and fees, which arise in connection with payments ensuing from this contract and/or their transfer shall be for the sole account of the Member.

12.4 **Currency.** All payments made on the basis of this contract shall be in CHF.

12.5 **Delays.** The Member shall immediately be deemed to be in default if the membership fee pursuant to section 12.1 does not reach Medsteps’ account on the first day of the month concerned (due date). Medsteps shall, in the case of default by the Member, be entitled to deny the Member access to the internet-based contractual products without the need for any further notice.

12.6 **Interest.** In the event of default, contractual interest of 5% per month shall be payable to Medsteps on the amount owed from the point where the default occurs up until the payment reaches the bank account specified in article 12.2. This article shall not prevent Medsteps from claiming higher damages on account of the default.

**PART F -
THE MEMBER'S GUARANTEES**

- 13. Guarantee.** The Member shall, by means of an independent warranty promise, guarantee that:
- 13.1 the provisions of this contract do not infringe any statutory provisions according to data privacy law applicable for the Member;
 - 13.2 the Member is a specialist plastic surgeon *[replace with other disciplines in each case]* and member of the *[relevant customary national]* association of plastic surgeons and there are currently no expulsion proceedings or revocation proceedings pending against the Member;
 - 13.3 the Member is covered by professional indemnity insurance, in accordance with the relevant statutory requirements, for his medical work during the term of this contract;
 - 13.4 the conclusion of this contract by the Member does not breach any statutory provisions applicable to the Member concerning doctors or professional ethics;
 - 13.5 the fulfilment of the performance obligations under this contract by the Member does not breach any statutory provisions or professional ethics concerning doctors applicable to the Member and/or data protection regulations applicable to the Member and/or any other statutory provisions.

**PART G -
TERM OF THE CONTRACT**

- 14.1 **Entry into force.** The contract shall enter into force upon its signature by both PARTIES. The contractual products (section 1.2) shall be made available to the Member within 4 weeks of this contract coming into force, provided that the Member has provided all services on its side to Medsteps, which Medsteps requires in order to make the said products available (in particular section 2.3). Only when the Member obtains access to the OFFICE system (section 2.4), shall it be authorized to make use of intellectual property rights granted under this contract.
- 14.2 **Term of the contract.** The contract shall be concluded for a period of 3 years. The contract shall be extended for another 3 years in each case, if neither PARTY provides written notice to the other PARTY 6 months prior to the expiry of the contract.
- 14.3 **Exceptional termination by either contracting party.** Notwithstanding section 14.2, this contract can be exceptionally terminated without notice by either PARTY on important

grounds without the terminating PARTY being obliged to pay compensation to the PARTY whose situation provided the grounds for termination. The PARTIES deem the following, in particular, to be important grounds within the meaning of this article:

- a. the Member is stripped of his medical licence and may no longer work as a doctor;
- b. the Member is no longer a member of the *[relevant customary national]* association of plastic surgeons;
- c. one of the guarantees conferred by the Member in section 13 of this contract is inapplicable;
- d. a PARTY applies for insolvency, and/or
- e. a PARTY fails to fulfil one of its main obligations under this contract and the situation is not rectified, upon the request of the other PARTY, within 30 (thirty) days of that request being received.

14.4 **Effect of the termination.** Termination shall have the following effects:

- a. **Rights to use intellectual property and entitlements.** When the contract ends, so too shall all rights to use intellectual property and entitlements under this contract. That shall include, in particular, the use of the contractual trademark, the KNOW-HOW and the access to the web-based offerings pursuant to part B.
- b. **Obligation to pay the fee.** Any payments still due by the Member when the termination enters into force pursuant to section 12 of this contract shall be due immediately and made to Medsteps.
- c. **Material.** All material made available by Medsteps in connection with this contract must no longer be used and must either be returned to Medsteps or destroyed, whichever Medsteps chooses.
- d. **No liability for termination.** The PARTIES agree that the termination of msc Membership for whatever reason will not subject Medsteps to any liability or obligation to the Member, except as specifically set forth in this agreement. In particular, the member shall not be entitled to any compensation for any establishment or extension to its circle of patients.

**PART H -
LIABILITY AND WARRANTY**

- 15.1 **Disclaimer of liability regarding industrial property rights.** Unless any provisions in this contract expressly state anything to the contrary, Medsteps shall not assume any liability/warranty for the scope of INDUSTRIAL PROPERTY RIGHTS, their validity and/or their independence from the rights of third parties. Further, Medsteps shall not assume any obligation to maintain the INDUSTRIAL PROPERTY RIGHTS, protect them from attacks by third parties and/or pursue infringements of the INDUSTRIAL PROPERTY RIGHTS by third parties, insofar as nothing is expressly stated to the contrary in this contract.
- 15.2 **Disclaimer of liability regarding the PORTAL.** Medsteps shall not assume any liability/warranty for the functional capability and/or permanent accessibility of the PORTAL. The Member is aware that the functional capability of the PORTAL is dependent on the proper provision of services by third parties (e.g. internet service providers), over which Medsteps has only limited influence. Furthermore, Medsteps shall not assume any liability/warranty for the accuracy or completeness of the contents of the PORTAL or the information available and/or visible on the PORTAL.
- 15.3 **Disclaimer of liability regarding KNOW-HOW.** Medsteps shall not assume any liability/warranty for the medical outcome of the KNOW-HOW. The PARTIES agree that the Member carries out medical interventions and/or operations and/or treatments on PATIENTS completely at its own responsibility and that Medsteps shall not be liable for any mistakes in connection with the treatment of PATIENTS and/or cannot be made liable for any damages on account of the treatment of PATIENTS by the Member. The same shall apply in cases where the Member uses surgical instruments, provided by Medsteps, in treating PATIENTS. The use of any surgical instruments and/or other documents and/or utensils provided by Medsteps is at the Member's full discretion.
- 15.4 **Binding law.** Liability or liability for defects on the basis of binding statutory provisions shall remain unaffected by section 15.
- 15.5 **Exemption.** The Member shall hold Medsteps harmless of all liability and claims regarding damage or injury (including fatalities) to third parties due to actual or alleged defects in the KNOW-HOW provided by Medsteps.

**PART I -
MISCELLANEOUS**

16.1 Applicable law

The contract shall be subject to Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The provisions of Swiss International Private Law shall, insofar as legally permitted, be expressly excluded.

16.2 Data protection

Medsteps expressly states that the collection, processing and use of personal data shall only be permitted in accordance with applicable statutory provisions. Disclosure of medical data routinely requires the express consent of the patient.

The Member undertakes to comply with the data privacy law applicable to him and his contractual relationship with his PATIENTS and Medsteps. The Member shall ensure that any PATIENT consent required is obtained. Such consent must be in writing and cover at least the following points: a) the collection and storage of the personal data and the treatment data, b) the disclosure of those data in Switzerland and the European Union, and c) the statistical use of those data where they have been rendered anonymous.

In the event of a breach of relevant standards on the part of the Member, the Member shall hold Medsteps harmless with regard to any claims for compensation brought by thirds parties.

16.3 Value-added tax

All payments from one PARTY to the other PARTY shall be subject to value-added tax, provided that it is owed in accordance with statutory provisions.

16.4 Offsetting

Both PARTIES may offset against claims due only if the counterclaim is legally established, acknowledged or undisputed.

16.5 Place of fulfilment and jurisdiction

The place of fulfilment shall be Cham, Switzerland. For all claims and/or disputes between the PARTIES arising from and/or in connection with this contract, the courts of Cham, Switzerland, insofar as legally permitted, shall be exclusively responsible.

16.6 Costs

Each PARTY shall bear the costs falling to it including the costs of the relevant PARTY's consulted adviser, provided that nothing to the contrary is stated in this contract.

16.7 Severability clause

Should individual provisions of this contract be or become ineffective or unenforceable in full or in part, or should a gap be identified in this contract, the validity of the other provisions shall not be affected. The PARTIES undertake to agree on a provision to replace the ineffective or unenforceable provision or to fill the gap, which, insofar as legally permitted, is economically closest to the inapplicable or omitted provisions or is closest to what the PARTIES would have intended in accordance with the meaning and purpose of this contract upon conclusion of this contract if they had considered the point.

16.8 Written form

All agreements, including subsidiary agreements, must be made in writing in order to take effect, unless anything is stated to the contrary in this agreement. That shall also apply to the abolishment of this clause on written form.

16.9 Annexes

Annex 1 (figurative mark) forms an integral part of this contract. By providing his signature, the Member confirms that he has received and has become acquainted with that annex and has understood the associated contractual obligations.

.....
Place, Date

.....
Medsteps AG

.....
Place, Date

.....
[...]

ANNEX 1
FIGURATIVE MARK

