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INVESTMENT AGREEMENT

BETWEEN

[____________________]

and

[____________________]
INVESTMENT AGREEMENT

THE UNDERSIGNED:

1. [Name], a private limited liability company under the laws of the Netherlands, having its registered office in [___] and its principal place of business in [___], hereinafter referred to as “[___]”, duly represented by [___];

2. [Name], a private limited liability company under the laws of [___], having its registered office in [___] and its principal place of business in [___], hereinafter referred to as “[___]”, duly represented by [___];

3. [Name], a private limited liability company under the laws of the Netherlands, having its registered office in [___] and its principal place of business in [___], hereinafter referred to as “[___]”, duly represented by [___];

4. [Name], a private limited liability company under the laws of the Netherlands, having its registered office in [___] and its principal place of business in [___], hereinafter referred to as “[___]”, duly represented by [___];

Parties [___] up to and including [___] hereinafter jointly and individually also referred to as “Existing Shareholders” and “Existing Shareholder” respectively.

WHEREAS:

- The Existing Shareholders are the holders of the entire issued and outstanding share capital of the Company as appears from the schedule attached to this agreement as Annex [___];

- The Existing Shareholders wish to issue new shares in the capital of the Company and wish to attract further funding for the Company that will enable it to execute its business plan;

- On [date] [___x] and the Company executed a so called Memorandum of Understanding containing the principle terms of [___x] investment in the Company;

- To induce [___x] to invest in the Company under the terms and conditions of this agreement, the Existing Shareholders have agreed, for the benefit of [___x], to make certain representations and warranties.
Each of the parties to this Agreement has obtained any and all necessary approvals and permits for the transactions and agreements contemplated hereby and have reached agreement on the terms and conditions set forth hereinafter.

[___x] has performed a pre investment review of the Company’s affairs on the basis of documents provided by the Company.

HAVE AGREED AS FOLLOWS:

1  DEFINITIONS AND INTERPRETATION

1.1. In this Agreement and all its annexes and appendices, the following capitalized words shall have the following meaning:

**Articles:** The Articles of Association of the Company as those may read at any given time.

**Board of Managing Directors:** The Board of Managing Directors (statutair bestuur) of the Company.

**Closing:** The completion of the transaction contemplated by this agreement to be held on the Closing Date at the offices of the Notary, the Netherlands, as defined herein.

**Closing Date:** The date on which the notarial deed of issue of shares has been executed.

**Common Shares:** The [___] common shares in the capital of the Company, with a nominal value of € [___] each.

**Milestones:** The milestones as defined in Annex [___].

**Notary:** The civil law notary, Mr. [___] of [___] notaries, [place], The Netherlands.

**Shareholder:** Any and all holders of Shares.
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Shares: All at any time issued [___] Common Shares.

Shareholders Agreement: The Shareholders Agreement, in the agreed form between the Parties to this agreement, attached hereto in final draft as Annex [___].

Signing Date: [___], or ultimately [___].

1.2. In this Agreement, headings are inserted for convenience purposes only and shall not affect the Construction of this agreement, and unless otherwise specified, all references to “clauses” are to clauses of this agreement.

1.3. Unless the context requires otherwise, words denoting the singular shall include the plural and vice versa and words purporting persons shall include companies, corporations, firms and partnerships and references to the parties shall include their successor(s) and permitted transferees and assigns.

1.4. If in this agreement reference is made to an individual’s “best knowledge”, such reference shall mean the knowledge available to that individual should the individual have made due inquiry.

ARTICLE 2. ISSUE OF SHARES

2.1. The Existing Shareholders hereby agree to issue [___x] an [___x] hereby agrees to accept from [___y] Common Shares in the capital of the Company under the terms and conditions laid down hereinafter and as appears from the following schedule:

[___]

2.2. The Shares referred to in sub clause 2.1 a shall be issued by means of a notarial deed of issue of a certain number of shares in three consecutive and yearly instalments in the form attached to this agreement as Annex 4, to be executed by Mr. [___] or his substitute of [___] civil law notaries (Notary). [___x] shall pay the consecutive contribution to the Shares as referred to in sub b and sub c under the respective condition of fulfillment of the Milestones (related to each year) as follows:

I. At Closing Date € [___] shall be paid to the bank account, number [___] at [___] bank, IBAN: [___], SWIFT/BIC: [___], in the name of [___y] in
order and under the title to contribute to [___] shares issued by [___y] at Closing date. After the deed of issue of the Shares has been executed, the Notary shall add the bank statement to the deed of issue;

II. At ultimately [___], or at a prior date as soon as the Milestones are reached or are to be reached according to the procedure referred to in Clause 2.4 € [___] shall be paid to the bank account [___], in the name of [___y] in order and under the title to contribute to the Shares as a share premium, if [___y] has fulfilled the Milestones;

If the amounts as referred to under the aforementioned subclauses should not be sufficient in order to reach the goals and objectives as defined in the Business plan and/ or Milestones or the management of [___y] decides otherwise, [___x] shall make another € [___] available at the request of [___y] in accordance with Clause 2.6 herein

2.3. The Shares to be issued in accordance with this clause shall be paid up by [___x] according to the schedule of Clause 2.2 by contributing totally €[___] up to [___] (in words: [___] euros) on those Shares, of which either € [___] or [___] (in words: [___] euros) dependent on the amount due pursuant to clause 2.2, shall be deemed share premium and be credited as such into the share premium reserve attached to the Shares. Contribution in the amount € [___] (in words: [___] euros) shall be made at the Closing, of which € [___] has been provided as a loan to [___y] already. This amount high € [___] will be converted into a share premium high € [___] pursuant to Clause 7 of the Loan Agreement between [___y] and [___x].

2.4. The managing directors of [___y] may after unanimously approved by the Shareholders referred to under the undersigned numbers 1, 2, 3 and 5 resolve that the amounts which are due pursuant to Clause 2.2 sub b and Clause 2.2 sub c can be amended (provided that the total amount due is not amended) and/ or are due and payable to the Shares of [___y] by [___x] at an earlier date then has agreed upon by the Parties herein provided that this payment is necessary in order to achieve the present Company’s objective, i.e. the development for [____________].

2.5. Following the issue of the Shares as set out in this clause, the Shares in the capital of the Company will be held as appears from the cap table attached to this agreement as Annex [___].
2.6. The Existing Shareholders waive their rights pursuant to clause 4 of the Articles in respect of the transfer of Shares set forth in this clause.

ARTICLE 3. ISSUE AND SUBSCRIPTION

3.1. The Existing Shareholders, jointly constituting the general meeting of shareholders of the Company, hereby resolve to:

   i. issue to [___x] [___] Common Shares as referred to in Clause 2;

   ii. exclude the preemptive rights in respect of the issue of Shares set forth in this sub clause.

3.2. [___x] agrees, under the condition precedent of the Shareholders Agreement (the final draft of which is attached to this agreement as Annex [___]) having been signed by the Parties hereto, to subscribe to [___] Common Shares at Closing Date. The Shares shall be issued at the Closing by a notarial deed of issuance, in the form attached to this agreement as Annex [___], to be executed by the Notary.

ARTICLE 4. CONDITIONS PRECEDENT

4.1. Closing is subject to the following condition precedent (opschortende voorwaarden), that the Shareholders’ Agreement have been executed by the Parties, which have been inserted for the Parties’ benefit, being satisfied or waived by [___x] and [___y] in accordance with the sub clause hereinafter.

4.2. If on the Closing date, (i) the condition set out in clause 4.1 has not been satisfied, or (ii) a condition set out in clause 4.1 has not been waived by [___x] in accordance with clause 4.2, [___x] may:

   a. waive the condition, or the unfulfilled portion, in full;

   b. postpone Closing to a date not later than 14 days, unless the condition in question is not reasonably capable of being satisfied within that extended time period; or

   c. dissolve the agreement, all without prejudice to the parties’ accrued rights and obligations at such time and save for the clauses of 8, 14 and 15.
ARTICLE 5. CONVENANTS OF MANAGERS AND EXISTING SHAREHOLDERS

If and in so far as is necessary each of the Existing Shareholders and its management shall transfer for no consideration to the Company all rights and assets, including intellectual property rights such as copyrights, held by them and relating to the business of the Company.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES / INDEMNIFICATIONS

6.1. [___] [___] and [___] (hereinafter also referred to as "Guarantors" and "Guarantor" respectively), recognize that [___x] 's willingness to invest in the Company is (i) based on the accuracy and completeness of the information provided to [___x] and (ii) based on the assumptions that to their best knowledge there is a high likelihood of achieving the forecasts as presented to [___x].

6.2. The Guarantors hereby represent and warrant that the information contained in the representations and warranties set out in Annex [___] (the "Representations and Warranties") is true and correct in all material respects on the date hereof and on the Closing Date, on which date the Representations and Warranties shall be deemed to have been repeated.

6.3. With the exception of the Representations and Warranties set out in Sections 2 and 3 of the Representations and Warranties (relating to corporate existence, title and authority), which shall survive Signing Date and Closing Date for the applicable statutory period of limitation and with the exception of the Representations and Warranties set out in Clause 8 (relating to tax matters), which shall survive Signing Date and Closing Date for the applicable period of limitation of five years extended by three months, [___] shall not be entitled to claim any compensation relating to all other Representations and Warranties upon expiry of 18 months from Closing Date.

ARTICLE 7. BREACH/ LIABILITY

7.1. The Guarantors shall jointly and severally be liable for payment of compensation under the Representations and Warranties up to an amount of € [___] (in words: [___] euros)insofar as the amount of compensation due by the Guarantors under the Representations and Warranties exceeds € [___] (in words: [___] euros) the Guarantors shall be liable severally, but not jointly, i.e. each Guarantor is only liable for his respective part of the total shares held by all three Guarantors.
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7.2. The Guarantors shall be under no liability in respect of any claim under the Representations and Warranties unless and until (i) the amount of any individual claim exceeds € [___] (in words: [___] euros), it being understood that several claims arising from the same set of facts or origin shall count as one claim, or (ii) the aggregate amount of all such claims exceeds € [___] (in words: [___] euros), in which event the Guarantors shall be liable for the whole amount of such claims and not merely for the excess.

7.3. [___x] hereby declares at the date hereof not to have actual knowledge, as a result of a pre-investment review or otherwise of facts or circumstances that would cause or constitute a breach under the Representations and Warranties.

7.4. Each of the Guarantors shall forthwith notify [___x] after becoming aware of facts, matters or circumstances constituting a breach under the Representations and Warranties. [___x] shall, within four weeks after becoming aware of facts, matters or circumstances constituting a breach under the Representations and Warranties, notify the same to the Guarantors and consult with the Guarantors with respect to the matter, it being understood that the failure to make such notification within four weeks will not effect [___x]’s right to claim under the Representations and Warranties. The Guarantors shall provide [___x] full access to all relevant premises, assets and documents relating to the alleged breach under the Representations and Warranties and shall be prompt and diligent in co-operating with and assisting the Investors in the evaluation of the facts, matters and circumstances.

7.5. The Guarantors shall not be liable for any losses suffered by [___x] :

   a. If and insofar as the [___x] or the Company is able to recover such losses under an insurance policy or from a third party;

   b. if and insofar as the Financial Statements include a specific provision for a fact or circumstance resulting in a claim;

   c. if and insofar as any provision included in the Financial Statements should prove to be released, whether fully or in part;

   d. if the Guarantor(s) has repaired the untrue or misleading nature of a Representations or Warranty within a reasonable time period pursuant to which the Guarantor(s) would liable under Clause 6.2;
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e. if and insofar the emergence of the losses is attributable to, of was enhanced by, the [___x] , [___x] 's group companies or parties related to [___x] in whatever form;

f. if [___x] , its (ultimate) shareholder or shareholders, representatives and/or consultants had actual knowledge of the fact or circumstances on which the action is based before the Closing Date, as a result of the due diligence review conducted by or on behalf of the [___x] , the disclosures relating to the Representations and Warranties, or in any other manner.

7.6. [___x] and/or the Company shall take all such measures as are reasonably necessary and meaningful to mitigate any damages resulting from the untrue or misleading nature of any Representation or Warranty where possible. If the untrue or misleading nature of a Representation or Warranty, or the extent of the resulting loss, is interrelated to an action against or by a third party, [___x] shall not take action against that third party unless in close consultation with the Guarantor(s); always exercising due care for the Guarantor(s)’s best interest. [___x] shall not enter into any settlement agreement with the third party without having obtained the Guarantor(s)’s express and prior written consent. At the Guarantor(s)’s first request, [___x] shall transfer the discussion on the merits of the dispute (including legal or arbitration proceedings) to the Guarantor(s), or have such proceedings transferred to the Guarantor(s).

ARTICLE 8. USE OF PROCEEDS

The contributions received by the company from [___x] on the shares shall be used by the company only to fund the clinical phase i, ii and iii program of the company and to execute the business plan, as it may read from time to time, and which is in current version attached to this agreement as annex 7.

ARTICLE 9. ANNOUNCEMENT TO THIRD PARTIES

[___x] and the Company shall consult and agree in advance with each other on the timing and tenor of any public announcement of this agreement and parties will not divulge the terms to any third party, all except as required by law, in which case the party required to provide information shall first consult with [___x] and the Company.
ARTICLE 10. NOTICES AND OTHER ANNOUNCEMENTS TO PARTIES HERETO

10.1. Except as otherwise required by law, all notices, announcements, summons and/or communications pursuant to this agreement shall be delivered to the addresses stated hereunder (or to such other address as a Party has communicated to the other Parties in accordance with this clause) by registered mail with return receipt or by courier:

[____]
Attention: Mr./Mrs. [____]
[address]
[zip code] [city]
[country]

[____]
Attention: Mr./Mrs. [____]
[address]
[zip code] [city]
[country]

[____]
Attention: Mr./Mrs. [____]
[address]
[zip code] [city]
[country]

10.2. Notices, announcements, summons and/or communications pursuant to this agreement shall be deemed to have been received at the following moments:

i. if send by registered letter: at the date of delivery evidenced by the return receipt;

ii. if send by courier: at the date of delivery by the courier to the addressee; and

iii. if sent via fax: at the time of sending evidence by the dispatch note.

ARTICLE 11. WAIVER OF RIGHT TO DISSOLUTION
The parties hereto waive their right to seek dissolution (dissolution) of this agreement after Closing.

ARTICLE 12. BINDING EFFORT, ASSIGNMENT

12.1. All terms, provisions, representations, warranties, covenants and conditions of this agreement shall only be binding upon and inure to the benefit of and be enforceable by the parties hereto after this agreement has been signed by all parties.

12.2. This agreement and any rights and obligations of the parties hereto may not be assigned or transferred by them to a third party without the prior written consent of all other parties.

12.3. If [___x] wishes to reorganize its shareholding in the Company, provided such reorganization will not lead to a change of control, the other parties shall not unreasonably withhold their consent to a proposed transfer of Shares to a group company of [___x] and agree to waive their pre-emptive rights in connection with such transfer, provided such transfer is done with a simultaneous transfer and assignment of that party’s rights and obligations pursuant to this agreement and any other agreements entered into in pursuance of or coincidentally with this agreement to such acquiring company and as such will not affect the other parties’ right hereunder.

ARTICLE 13. PARTIAL INVALIDITY

13.1. In the event that one or more provisions of this agreement appear to be non-binding, the other provisions of this agreement will continue to be effective. The parties are obliged to replace the non-binding clauses with other clauses that are binding, in such a way that the new clauses differ as little as possible from the non-binding clauses, taking into account the object, the intent and the purpose of this agreement.

ARTICLE 14. FEES AND COSTS

14.1. All reasonable costs and expenses and advisory fees incurred by [___x] in connection with the preparation of and the entering into this agreement and the entering into any other agreements pursuant to or in connection with this agreement and the notarial costs in connection with the implementation of the transactions and agreements contemplated hereby shall be borne by [___y].
ARTICLE 15. ENTIRE AGREEMENT

15.1. The parties agree that this agreement will create valid and binding obligations between them and that they will execute this agreement promptly after their signing.

15.2. The recitals to this agreement and the annexes and appendices form an integral part of this agreement. This agreement can be amended, restated or supplemented only by an instrument in writing signed by all parties.

15.3. This agreement and the other agreements, documents and resolutions entered into or delivered coincidentally with this agreement contain all of the agreements between the parties hereto with respect to the transactions and agreements contemplated by this agreement and supersedes all earlier written and/or oral agreements with respect to the subject matter(s) hereof, including but not limited to the term sheet referred to in recital [___] to this agreement.

ARTICLE 16. APPLICABLE LAW AND CHOICE OF FORUM

16.1. Any dispute, controversy or claim between or among the parties hereto arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof shall be settled, in so far as it is possible, by mutual consultation and consent.

16.2. If the Parties hereto should be unable to reach mutual consent, the question shall be settled by arbitration. The award of the arbitration shall be final and binding upon the parties hereto.

16.3. The arbitration shall be held in [___], in accordance with the [___]. The number of arbitrators shall be three (3), one each shall be nominated by [___x] and the other Shareholders and the third arbitrator shall be nominated by the two (2) nominated arbitrators of Ortho Surgical and the other Shareholders. In the event that the two (2) arbitrators cannot agree on the appointment of the third arbitrator, then the third arbitrator shall be appointed by the chairman of the Chamber of Commerce in [___]. The language shall be [___].

This Agreement has signed in [___] counterparts on [___]
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[Party 1]
_________________
[name]

[Party 2]
_________________
[name]

[Party 3]
_________________
[name]

[Party 4]
_________________
[name]

[Party 5]
_________________
[name]