UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.  20549

FORM 8-K

Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):  August 4, 2005

NUVASIVE, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware  000-50744  33-0768598
(State or other jurisdiction of (Commission File Number) (I.R.S. employer incorporation or organization) identification number)

4545 Towne Centre Court
San Diego, California  92121
(Address of principal executive offices)  (Zip Code)

(858) 909-1800
(Registrant’s Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).
On August 4, 2005, NuVasive, Inc. (“NuVasive”) acquired assets and technology from Pearsalls Limited (“Pearsalls”), pursuant to the terms of an Asset Purchase Agreement dated as of such date (the “Purchase Agreement”). The acquired assets include a cervical nucleus-like replacement device called Neodisc, a development-stage product. Also included is all of Pearsalls’ intellectual property related to embroidery technology for use in surgical implants. The additional potential products are in early development stages.

The closing of the acquisition was completed on the same date as the Purchase Agreement. The transaction required a closing payment by NuVasive of $12 million, including $5 million in cash and $7 million in stock. Terms of the transaction call for NuVasive to make additional payments upon the achievement of certain milestones leading to FDA approval that could total up to an additional $31.5 million in cash and stock. NuVasive will also pay a royalty of 5% on sales of the Neodisc product for the life of the relevant patents.

The closing payment included 395,972 unregistered shares of NuVasive’s common stock (the “Shares”). NuVasive has an obligation to register the shares for resale. In addition, (a) NuVasive must pay to Pearsalls the amount by which the aggregate value of the Shares is less than $6,300,000 on the day prior to the effectiveness of the registration statement, and (b) Pearsalls must pay to NuVasive the amount by which the aggregate value of the Shares exceeds $7,700,000 on the day prior to the effectiveness of the registration statement.

Under the Purchase Agreement, NuVasive has an obligation to use commercially reasonable efforts to commercialize products based on the acquired technology, which obligation can be satisfied by the successful commercialization of certain products, continuing commercialization efforts, or making cash payments totaling no more than $10 million. If NuVasive does not pursue commercialization and also elects not to make the cash payments, rights to the acquired technology could revert to Pearsalls.

In connection with the transaction, the parties also executed an Exclusive Manufacturing Agreement pursuant to which Pearsalls will act as the exclusive manufacturer of the Neodisc product, subject to NuVasive’s right to move manufacturing under certain circumstances.

As a result of the acquisition, the operations associated with the acquired assets will be included in NuVasive’s consolidated financial results for periods from and subsequent to August 5, 2005.
Item 9.01 Financial Statements and Exhibits

(c) Exhibits

<table>
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<tr>
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<td>Press Release issued by NuVasive, Inc. dated June 6, 2005</td>
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* Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. This exhibit has been filed separately with the Secretary of the Commission without the redactions pursuant to our Application Requesting Confidential Treatment under the Securities Exchange Act of 1934.
SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: August 10, 2005

NUVASIVE, INC.

By: /s/ Kevin C. O'Boyle,

Chief Financial Officer
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ASSET PURCHASE AGREEMENT

AMONG

NUVASIVE, INC.

PEARSALLS LIMITED

AND

AMERICAN MEDICAL INSTRUMENTS HOLDINGS, INC.

AUGUST 4, 2005
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This ASSET PURCHASE AGREEMENT (the “Agreement”), dated as of August 4, 2005, is entered into by and among NuVasive, Inc., a Delaware corporation (“Buyer”); Pearsalls Limited, a private limited company incorporated in England and Wales under registration number 03851227 (“Seller”); and American Medical Instruments Holdings, Inc., a Delaware corporation (“Seller Parent”).

RECITALS

WHEREAS, Seller operates a business and owns certain assets in connection with the ownership, design, development and commercial exploitation by Seller of non-vascular applications of embroidery technology for surgical implants, including, without limitation, Seller’s products referred to by Seller by the name “NeoDisc™” and related spine motion preserving technologies, test methods and know-how (collectively, the “Medical Device Global Operations”); and

WHEREAS, subject to the terms and conditions of this Agreement, Seller desires to sell, and Buyer desires to buy, all of Seller’s right, title and interest in and to all of the intellectual property assets primarily used in the operation of the Medical Device Global Operations;

NOW, THEREFORE, in consideration of the premises and the covenants and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any agreement referred to below shall mean such agreement as amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement.

“Activities to Date” has the meaning specified in Section 4.13(a) hereof.

“Additional Agreements” means all agreements (including exhibits), instruments and documents being or to be executed and delivered under this Agreement or in connection herewith, including, but not limited to, the following: (i) the Assumption Agreement; (ii) the Intellectual Property Assignment; (iii) the Bill of Sale and Assignment; (iv) the Registration Rights Agreement; (v) the Exclusive Manufacturing Agreement; and (vi) the Services Agreement.

“Affiliate” means, as to any Person, any other Person which is controlling, controlled by or under common control with such Person.
“Agreement” has the meaning specified in the first paragraph of this Agreement.

“Assigned Ellis License Rights” has the meaning set forth on Schedule 1.1(a).

“Assumed Liabilities” has the meaning specified in Section 2.3 hereof.

“Assumption Agreement” means that certain Assumption Agreement dated as of the Closing Date, by and between Buyer and Seller.

“Benefits” has the meaning specified in Section 4.18 hereof.

“Bill of Sale and Assignment” means that certain Bill of Sale and Assignment dated as of the Closing Date, executed by Seller in favor of Buyer, relating to the sale of certain of the Purchased Assets.

“Buyer” has the meaning specified in the first paragraph of this Agreement.

“Buyer Affiliates” has the meaning specified in Section 7.1(a) hereof.

“Cap” has the meaning specified in Section 7.4 hereof.

“Cervical Spine Products” means total disc replacement products designed or developed for use principally in the cervical region of the spine that incorporate Medical Device Intellectual Property.

“Claims and Losses” has the meaning specified in Section 7.1(a) hereof.

“Closing” has the meaning specified in Section 3.1(a) hereof.

“Closing Cash Consideration” has the meaning specified in Section 2.4(a) hereof.

“Closing Consideration” has the meaning specified in Section 2.4 hereof.

“Closing Date” has the meaning specified in Section 3.1(a) hereof.

“Closing Shares” has the meaning specified in Section 2.4(b) hereof.

“Common Stock” means the common stock of Buyer, $0.001 par value per share.

“Competitive Activity” means directly or indirectly (or having any material interest in, or performing any research and development services for, any Person that is directly or indirectly) (i) engaging in any activity that is the same as, materially similar to, or competitive with the Medical Device Global Operations; (ii) engaging in the development or distribution of any product that is the same as, materially similar to, or competitive with any of the Medical Device Products developed by Buyer during the Noncompetition Period; or (iii) diverting or attempting to divert from Buyer or any Affiliate of Buyer any business of any kind relating to the Medical Device Global Operations, including the solicitation of or interference with any suppliers, consultants, contractors, or customers of such operations; provided, however, that no action
taken by Seller for or at the request of Buyer, pursuant to the Exclusive Manufacturing Agreement or otherwise, shall constitute a Competitive Activity.

“Contracts” has the meaning specified in Section 4.9 hereof.

“Copyrights” means copyrights, whether or not registered, and registrations and applications for registration thereof, and all rights therein provided by law, multinational treaties or conventions.

“Deductible” has the meaning specified in Section 7.4 hereof.

“Disclosed Scheme” has the meaning specified in Section 4.18 hereof.


“Encumbrance” means any lien, security interest, mortgage, pledge, easement, conditional sale or other title retention agreement, defect in title or other restrictions on title.


“Excluded Assets” means all assets of Seller and its Affiliates other than the Purchased Assets.

“Exclusive Manufacturing Agreement” means that certain Exclusive Manufacturing Agreement dated as of the Closing Date, by and between Buyer and Seller.

“Expense and Liability Schedules” has the meaning specified in Section 4.19 hereof.

“FDA” means the United States Food and Drug Administration.

“FDA Approval” means, with respect to the PMA Application for the Cervical Spine Products, written notification from the FDA that such products have been approved to be marketed in the United States for the approved indications without conditions or with conditions that are commercially reasonable after a satisfactory review by the FDA of the PMA Application for such products; provided, however, that a written notification from the FDA that products have been approved to be marketed in the United States for the approved indications with conditions shall be an “FDA Approval” if Buyer thereafter sells such product in the United States.

“First Contingent Milestone Payment” has the meaning specified in Section 2.5(a)(i) hereof.

“First Milestone” means IDE Approval on the Cervical Spine Products.
“Governmental Body” means any federal, state, county, local, district, public authority, public agency or any other political subdivision, public corporation or governmental or regulatory or supervisory authority, whether foreign (including United Kingdom) or domestic.

“Governmental Order” means any judgment, order, award or decree of any foreign, federal, state, local or other court or tribunal, or any Governmental Body and any award in any arbitration proceeding.

“Governmental Permits” has the meaning specified in Section 4.5 hereof.

“IDE Application” means an Investigational Device Exemption application submitted for approval to the FDA with respect to the Cervical Spine Products, including a proposed US pivotal clinical study protocol (“US Pivotal Study”) with indications for use (and exclusion criteria), evaluation criteria to assess equivalence or success of the device relative to a control, and device testing and validation documents.

“IDE Approval” means the FDA has approved the IDE Application such that Buyer may initiate the PMA US Pivotal Study protocol set forth in the IDE Application subject to compliance with the following requirements: (a) labeling according to 21 CFR 812.5; (b) distribution according to 21 CFR 812.43(b); (c) informed consent according to 21 CFR 50; (d) monitoring according to 21 CFR 812.46; (e) prohibitions according to 21 CFR 812.7; and (f) records and reports according to 21 CFR 812.140 and 21 CFR 812.150.

“IDE Enrollment” means the enrollment by Buyer of a sufficient number of patients to participate in the US Pivotal Study approved in the IDE Approval to support the filing of a PMA Application for the Cervical Spine Products.

“Indebtedness” means, with respect to any Person, any indebtedness, secured or unsecured, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), and evidenced by bonds, notes, facility letters, loan agreements, charges, debentures or similar instruments or letters of credit, to the extent of the face value thereof (or, in the case of evidence of indebtedness issued at a discount, the current accredit value thereof) or (b) representing the balance deferred and unpaid of the purchase price of property or services (other than accounts payable (including trade payables) in the ordinary course of business) and shall also include, to the extent not otherwise included, (i) any capitalized lease obligations and (ii) the face value of guarantees of items of other Persons which would be included within this definition for such other Persons (whether or not such items would appear upon the balance sheet of the guarantor).

“Indemnified Party” means a party seeking indemnification under this Agreement.

“Indemnifying Party” means a party from whom indemnification is sought under this Agreement.

“Insolvency Act” has the meaning specified in Section 4.21 hereof.

“Insurance Period” has the meaning specified in Section 6.4 hereof.
“Intellectual Property Assignment” means that certain Intellectual Property Assignment dated as of the Closing Date, executed by Seller in favor of Buyer.

“Material Adverse Event” means any change, circumstance or effect that, individually or in the aggregate with all other changes, circumstances and effects, is or would have a material adverse effect on the Purchased Assets, Assumed Liabilities or the Medical Device Global Operations, but excluding any effect resulting from or relating to (a) general political or economic conditions, general financial and capital market conditions (including interest rates) or general effects on any of the healthcare or biotechnology industries, or in each case, any changes therein (including as a result of (i) an outbreak or escalation of hostilities involving the United States, the United Kingdom or any other country or the declaration by the United States, the United Kingdom or any other country of a national emergency or war, or (ii) the occurrence of any act of terrorism), (b) the public announcement or the becoming public of the transactions contemplated by this Agreement, (c) any action taken by Buyer or any of its Affiliates or representatives, (d) any changes in Requirements of Laws, generally accepted accounting principles or any authoritative interpretations thereof, or (e) any action taken or failed to be taken by Seller or any of its Affiliates as required by this Agreement or at the written request of Buyer.

“Medical Device Global Operations” has the meaning specified in the recitals to this Agreement.

“Medical Device Intellectual Property” means all of the intellectual property included in the Purchased Assets.

“Medical Device Products” means any medical devices owned, designed, developed, manufactured, marketed or commercially exploited by Seller (prior to the Closing Date) or by Buyer that incorporate the Medical Device Intellectual Property, including, without limitation, the Cervical Spine Products.

“Medical Device Product Licenses” has the meaning specified in Section 4.13(a) hereof.

“Milestones” has the meaning specified in Section 2.5(a) hereof.

“Milestone Payments” has the meaning specified in Section 2.5(a) hereof.

“Milestone Target Dates” has the meaning specified in Section 2.5(b) hereof.

“Net Sales” means (a) in the case of an arm’s length transaction exclusively for money, the total amounts invoiced in respect of the Medical Device Products after deduction of normal trade discounts (but not discounts for accelerated payment) actually granted and of any credits actually given for returned or defective goods and excluding, or making proper deductions for, any costs of packing, insurance, carriage and freight and value added tax or other sales tax and, in the case of export orders, any import duties or similar applicable governmental levies or export insurance costs, subject in all cases to the same being separately charged on customer invoices; (b) in any sale or other disposal of any Medical Device Products other than in an arm’s length transaction exclusively for money, the fair market value shall, if higher and subject to (c) below, be substituted for the invoiced value; and (c) where there is an initial disposal of Medical Device Products by Buyer or any licensee of Buyer to any Affiliate of Buyer and a subsequent

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sale to a Person other than Buyer or an Affiliate of Buyer, the Net Sales shall be calculated by reference to the invoiced ex-works sales value (or as the case may be, the fair market value) pertaining to the first sale or other disposal to a Person other than Buyer or an Affiliate of Buyer.

“Noncompetition Period” has the meaning specified in Section 6.2 hereof.

“Nondisclosure Agreement” means that certain Mutual Non-Disclosure and Non-Use Agreement, dated as of January 20, 2005 by and between Buyer and Seller.

“Non-Cervical Spine Products” means any Medical Device Products designed or developed for use principally in any region of the spine other than the cervical region of the spine.

“Non-Spine Products” means any Medical Device Products designed or developed for use principally in any region of the body other than the spine.

“Other Claim” has the meaning specified in Section 7.2(b) hereof.

“Other Claim Notice” has the meaning specified in Section 7.2(b) hereof.

“Patents” means all worldwide statutory invention registrations, patents, patent registrations and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations) and all rights therein provided by law, multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or patent application.

“Permitted Encumbrances” means (a) liens for taxes and other governmental charges and assessments which are not yet due and payable, (b) liens of landlords and liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of business for sums not yet due and payable and (c) other liens or imperfections on property which are not material in amount or do not materially detract from the value of or materially impair the existing use of the property affected by such lien or imperfection.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any other entity.

“Post-Closing Transferred Employee Obligations” means all salaries, wages, commissions, bonuses, holiday pay, national insurance contributions, pension contributions and all other employment costs in relation to the Transferred Employees arising after the Closing Date and all liabilities, obligations, costs, claims and demands arising from any change in the terms and conditions or working conditions of the Transferred Employees occurring on or after the Closing Date or from the termination of the employment of any of the Transferred Employees on or after the Closing Date or as a result of any act or omission of Buyer after the Closing.

“PMA Application” means the pre-market approval application submitted to the FDA pursuant to Section 515 of the Food, Drug and Cosmetic Act for the purpose of obtaining
permission from the FDA to market the Cervical Spine Products in the United States for approved indications.

“Progress Failure Notice” shall have the meaning specified in Section 2.5(b) hereof.

“Progress Reply” shall have the meaning specified in Section 2.5(b) hereof.

“Progress Response” shall have the meaning specified in Section 2.5(b) hereof.

“Purchased Assets” has the meaning specified in Section 2.1 hereof.

“Records” has the meaning specified in Section 2.1(c) hereof.

“Reference Market Value” means the average closing sale price, as published in The Wall Street Journal, of a share of Common Stock on the NASDAQ National Market for the thirty (30) consecutive trading day period ending two (2) business days prior to the date on which such Reference Market Value is determined.

“Registration Rights Agreement” means that certain Registration Rights Agreement dated as of the Closing Date between Buyer and Seller.

“Reimbursement Amounts” means the amounts set forth on Schedule 1.1(b).

“Requirements of Laws” means any applicable foreign, federal, state and local laws, statutes, regulations, rules, codes, ordinances, enforceable judgments, injunctions, decrees and orders, permits, approvals, treaties, enacted, adopted, issued or promulgated by any Governmental Body (including, without limitation, those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements) or common law in effect as of the Closing Date.

“Retained Ellis License Rights” means all rights and obligations under the Ellis Licence other than the Assigned Ellis License Rights.

“Retained Liabilities” means all liabilities of Seller other than the Assumed Liabilities, including, without limitation, (i) Seller’s obligation to perform and discharge all of its obligations in respect of the Transferred Employees for its own account up to and including the Closing Date, including, without limitation, any obligation to discharge bonus and incentive payments, fees and other remuneration or liability payable after the Closing Date in respect of an entitlement accrued to any extent for the period before the Closing Date and (ii) any liability set forth on Schedule 4.11 hereto.

“Reversion Assets” means the Purchased Assets, but excluding any of the Transferred Agreements that Seller elects at the time of exercising the Right of Reversion not to be included in the Reversion Assets.

“Right of Reversion” has the meaning specified in Section 2.6(a) hereof.
“Schedules” means the schedules prepared by Seller, referenced in the main text of this Agreement and attached hereto.

“Second Contingent Milestone Payment” has the meaning specified in Section 2.5(a)(ii) hereof.

“Second Milestone” means completion of recruitment for the clinical studies, i.e., completion of all of the surgeries on all of the patients recruited for both total cervical disc replacement and control fusion, in accordance with an IDE approved by the FDA initiated by Buyer or any of its Affiliates or licensees.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Seller” has the meaning specified in the first paragraph of this Agreement.

“Seller Affiliates” has the meaning specified in Section 7.1(b) hereof.

“Seller Parent” has the meaning specified in the first paragraph of this Agreement.

“Seller’s Knowledge” means the actual knowledge of Alan McLeod, Chris Reah, Lawson Lyon and Jim Banks and the knowledge such individuals would have after due inquiry.

“Services Agreement” means that certain Services Agreement dated as of the Closing Date, by and between Buyer and Seller.

“Tax” means all forms of taxation, duties, imposts and levies, whether of the United Kingdom or elsewhere, including any foreign (including United Kingdom), federal, state, local or foreign net income, alternative or add-on minimum, gross income, gross receipts, property, sales, use, transfer, gains, license, excise, employment, payroll, withholding or minimum tax, corporation tax, capital gains tax, value added tax, stamp duty, stamp duty land tax, stamp duty reserve tax, national insurance contributions, value-added, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Body.

“Tax Return” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“Territory” means England, the remainder of the United Kingdom, Europe, North America or any other country or smaller geographical area in which the Medical Device Global Operations are carried out, or where Buyer is intending to carry out business in relation to the Medical Device Global Operations at the Closing Date.

“Third Contingent Milestone Payment” has the meaning specified in Section 2.5(a)(iii) hereof.

“Third Milestone” means the granting of FDA Approval for sale by Buyer or any of its Affiliates or licensees of any Cervical Spine Product in the United States.
“Third Party Claim” has the meaning specified in Section 7.2(a)(i) hereof.

“Third Party Claim Notice” has the meaning specified in Section 7.2(a)(i) hereof.

“Third Party Expenses” has the meaning specified in Section 8.10 hereof.

“Trade Secrets” means trade secrets and confidential, technical information (including ideas, formulas, compositions, inventions and conceptions of inventions, whether patentable or unpatentable and whether or not reduced to practice).

“Trademark” means the name “NeoDisc™”, including all of the goodwill associated therewith, whether or not registered, including all common law rights and registrations and applications for registration thereof.

“Transfer Taxes” has the meaning specified in Section 2.10 hereof.

“Transferred Agreements” has the meaning specified in Section 2.1(b) hereof.

“Transferred Employees” means Mr. Alan McLeod, Mr. Chris Reah and Ms. Kelly Lisa Roseby.

“Transferred Permits” has the meaning specified in Section 2.1(d) hereof.

“2004 Expense and Liability Schedule” has the meaning specified in Section 4.19 hereof.

“2005 Expense and Liability Schedule” has the meaning specified in Section 4.19 hereof.

“Valid Claim” means a claim of any issued, unexpired patent (and not a patent application) that has not been revoked or held unenforceable or invalid by a decision of a court or Governmental Body of competent jurisdiction from which no appeal can be taken, or with respect to which an appeal is not taken within the time allowed for appeal, and that has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, and that has not been lost through an interference proceeding or by abandonment.

“Valid Claim Notice” means either a Valid Other Claim Notice or a Valid Third Party Claim Notice.

“Valid Other Claim Notice” has the meaning specified in Section 7.2(b) hereof.

“Valid Third Party Claim Notice” has the meaning specified in Section 7.2(a)(i) hereof.

**ARTICLE 2**

**PURCHASE AND SALE**

2.1 Purchase and Sale. On the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and accept from Seller, all right, title and interest of Seller in and to the following
tangible and intangible properties and assets owned or held by Seller (collectively, the “Purchased Assets”) free and clear of all Encumbrances (except for Permitted Encumbrances), but excluding the Excluded Assets:

(a) the intellectual property used or held for use primarily in connection with non-vascular applications of embroidery technology for surgical implants, including without limitation the intellectual property set forth on Schedule 4.7(a), but excluding the mark “Pearsalls” and the Retained Ellis License Rights, (ii) the Assigned Ellis License Rights, (iii) the goodwill associated therewith, and (iv) all rights to sue for and recover and retain damages, costs or attorneys’ fees for present and past infringement thereof;

(b) the contracts, agreements, commitments, licenses, undertakings, arrangements, and other legally binding contractual rights or obligations listed on Schedule 2.1(b) hereto (collectively, the “Transferred Agreements”);

(c) all technical drawings, design master records, device history files and records, verifications and validations, medical device reports, internal audit reports, supplier lists, books, ledgers, correspondence, promotional and marketing materials (including, without limitation, catalogues, brochures and trade show equipment), and any documentation consistent with CE mark requirements and ISO certification requirements and any other information or documentation relating to the Medical Device Products (collectively, the “Records”);

(d) the approvals from the United Kingdom and French Governmental Bodies to conduct clinical investigations of the Cervical Spine Products (collectively, the “Transferred Permits”), to the extent transferable;

(e) copies of all documents sent to or received from the FDA and any foreign counterpart relating to the Medical Device Products, including, without limitation, submissions and amendments, clearances received, acknowledgment letters, audits and warning letters, file submissions to other countries and other similar documentation;

(f) copies of all data, studies, reports and publications relating to the Medical Device Products that have been completed, are in process, or are being formulated or collected by Seller as of the Closing Date;

(g) all finished goods inventory and samples of Medical Device Products; and

(h) the assets listed on Schedule 2.1(h).

2.2 **Assets Not to be Transferred.** Seller shall retain and Buyer shall not acquire any assets or properties of Seller other than the Purchased Assets.

2.3 **Liabilities and Obligations.** On the Closing Date, Buyer shall accept, assume and agree to pay, perform or otherwise discharge, in accordance with the respective terms and subject to the respective conditions thereof and hereof, all liabilities and obligations under the Transferred Agreements and the Assigned Ellis License Rights, except for liabilities and obligations (i) incurred, accrued or arising on or before the Closing Date or (ii) resulting from a breach thereof by Seller (the “Assumed Liabilities”).
2.4 **Closing Consideration.** In consideration for the Purchased Assets, Buyer shall pay or do the following at the Closing (collectively, the “Closing Consideration”):

(a) Buyer shall pay to Seller $5,000,000 in cash at the Closing by wire transfer of immediately available funds to such account as Seller shall, not less than one (1) business day prior to the Closing Date, designate in writing to Buyer (the “Closing Cash Consideration”); and

(b) Buyer shall issue to Seller at the Closing that number of shares of Common Stock (the “Closing Shares”) equal to the quotient obtained by dividing (x) $7,000,000 by (y) the Reference Market Value on the Closing Date, with any fraction of a share of Common Stock being treated as provided in Section 2.8 below.

2.5 **Additional Consideration.**

(a) As additional consideration for the Purchased Assets, Buyer shall make certain contingent payments (collectively, the “Milestone Payments”) to Seller on the terms and subject to the conditions provided in this Section 2.5. Buyer shall use commercially reasonable efforts to rapidly bring the Cervical Spine Products through the required regulatory processes and ultimately to market in the United States. Buyer shall be deemed to have fulfilled such obligation in the event that all of the following milestones (the “Milestones”) are achieved.

(i) Within 15 calendar days following completion of the First Milestone, Buyer shall make a Milestone Payment (the “First Contingent Milestone Payment”) to Seller consisting of (i) $6,300,000 in cash, and (ii) that number of shares of Common Stock equal to the quotient obtained by dividing (x) $4,200,000 by (y) the Reference Market Value on the date of payment, with any fraction of a share of Common Stock being treated as provided in Section 2.8 below.

(ii) Within 15 calendar days following completion of the Second Milestone, Buyer shall make a Milestone Payment (the “Second Contingent Milestone Payment”) to Seller consisting of (i) $3,600,000 in cash, and (ii) that number of shares of Common Stock equal to the quotient obtained by dividing (x) $2,400,000 by (y) the Reference Market Value on the date of payment, with any fraction of a share of Common Stock being treated as provided in Section 2.8 below.

(iii) Within 15 calendar days following completion of the Third Milestone, Buyer shall make a Milestone Payment (the “Third Contingent Milestone Payment”) to Seller consisting of (i) $9,000,000 in cash, and (ii) that number of shares of Common Stock equal to the quotient obtained by dividing (x) $6,000,000 by (y) the Reference Market Value on the date of payment, with any fraction of a share of Common Stock being treated as provided in Section 2.8 below.

(b) Buyer shall report to Seller at least quarterly on the progress being made toward the achievement of the Milestones. Seller shall notify Buyer within 60 days after receiving any such progress report (a “Progress Failure Notice”) if it believes that Buyer is not fulfilling its obligation to use commercially reasonable efforts to rapidly bring the Cervical Spine
If Seller does not deliver to Buyer a timely Progress Failure Notice with respect to a periodic report, then for purposes of Section 2.6(c)(ii) of this Agreement, Buyer shall be deemed to have used commercially reasonable efforts to rapidly bring the Cervical Spine Products through the required regulatory processes and ultimately to market in the United States for the period to which such report relates; provided, however, that if the periodic report delivered by Buyer was materially inaccurate or materially misleading, then Seller’s failure to deliver a timely Progress Failure Notice shall have no effect. If Buyer disagrees with the Progress Failure Notice, Buyer shall respond (a “Progress Response”) to the Progress Failure Notice within 30 days after receiving the Progress Failure Notice, setting forth the reasons it believes its efforts were commercially reasonable. Seller shall advise Buyer in writing (a “Progress Reply”) within 30 days after receiving a Progress Response from Buyer whether or not it agrees with Buyer that Buyer’s efforts during the period in question were commercially reasonable. If Seller agrees in its Progress Reply that Buyer’s efforts during the period in question were commercially reasonable, or if Seller does not deliver to Buyer a timely Progress Reply with respect to a Progress Response, then for purposes of Section 2.6(c)(ii) of this Agreement, Buyer shall be deemed to have used commercially reasonable efforts to rapidly bring the Cervical Spine Products through the required regulatory processes and ultimately to market in the United States for the period to which such report relates; provided, however, that if the Progress Response delivered by Buyer was materially inaccurate or materially misleading, then Seller’s failure to deliver a timely Progress Reply shall have no effect.

(c) If (i) the IDE Application for the Cervical Spine Products is not submitted to the FDA before December 31, 2005, (ii) the First Milestone is not completed within six months after the submission to the FDA of the IDE Application for the Cervical Spine Products, (iii) the Second Milestone is not completed within one year after the First Milestone is completed, or (iv) the Third Milestone is not completed within three years after the Second Milestone is completed (collectively, the “Milestone Target Dates”), then on ten (10) days’ notice from either party to the other, the parties shall meet to discuss the reasons for the delay in achieving the submission or Milestone, and Buyer shall provide Seller with either:

(A) a revised schedule for such submission or Milestone and future Milestones, together with a reasonably detailed written plan for achieving the proposed schedule;

(B) notice of its suspension of the development or commercialization of the Cervical Spine Products, together with a reasonably detailed explanation of Buyer’s current plans with respect to the Cervical Spine Products; or

(C) notice of its abandonment of the development or commercialization of the Cervical Spine Products, together with a reasonably detailed written explanation of the significant factors that led to Buyer’s abandonment.

If Buyer believes that any submission or Milestone is unlikely to be achieved by its Milestone Target Date, Buyer promptly shall provide Seller, with an explanation of the significant factors that it believes are responsible for the anticipated delay.
2.6 **Right of Reversion.**

(a) Seller shall have a right (a "**Right of Reversion**") permitting Seller, at its option, to regain ownership of the Reversion Assets subject to the limitations and restrictions set forth in this Section 2.6, in the event that:

(i) Buyer notifies Seller that it is abandoning the development or the commercialization of the Cervical Spine Products; or

(ii) Buyer fails to use commercially reasonable efforts to rapidly bring the Cervical Spine Products through the required regulatory processes and ultimately to market in the United States.

Failure to achieve a Milestone in whole or in part due to a good faith determination by Buyer, in an exercise of reasonable business judgment, to suspend its efforts with respect to the Cervical Spine Products for a period of time shall not, by itself, give rise to a Right of Reversion under Section 2.6(a)(ii); **provided** that Buyer gives Seller a reasonably detailed explanation in writing of the significant factors behind the decision, the factors that will determine when and how Buyer resumes such efforts and Buyer’s long-term plans and expectations for the Cervical Spine Products and other Medical Device Products.

(b) If Seller has a Right of Reversion arising under Section 2.6(a)(i), such right must be exercised in writing within 90 days after Seller receives notification from Buyer of abandonment. If Seller believes that it has a Right of Reversion arising under Section 2.6(a)(ii), such Right of Reversion shall not be exercisable unless Seller gives written notice to Buyer of its belief that a Right of Reversion has arisen under Section 2.6(a)(ii), together with a reasonably detailed explanation of why Seller believes a Right of Reversion has arisen under Section 2.6(a)(ii), and Buyer fails, during the 90-day period following delivery of such notice, to cure the condition giving rise to the Right of Reversion. If such right exists and is timely exercised, Seller may elect to have the ownership of the Reversion Assets transferred to Seller, in which case, promptly after notice to Buyer of such election, Buyer will execute all documents required to transfer ownership of all Reversion Assets to Seller.

(c) Notwithstanding any provision herein to the contrary, no Right of Reversion can arise if

(i) all of the Milestones are achieved;

(ii) Buyer has, for a total of sixty (60) months, which need not be consecutive, used commercially reasonable efforts to rapidly bring the Cervical Spine Products through the required regulatory processes and ultimately to market in the United States;

(iii) Buyer has spent at least $10 million (including the Reimbursement Amounts) with respect to development, regulatory approval or commercialization efforts for the Medical Device Products;

(iv) Buyer makes a payment to Seller of the lesser of (A) all unpaid Milestone Payments and (B) the difference between $10 million and the amount spent by Buyer.
with respect to development, regulatory approval or commercialization efforts for the Medical Device Products (including the Reimbursement Amounts); or

(v) the sum of (A) the earn-out payments paid by Buyer pursuant to Section 2.9 and (B) the amount spent by Buyer with respect to development, regulatory approval or commercialization efforts for the Medical Device Products (including the Reimbursement Amounts) equal $10 million.

(d) If Seller exercises its Right of Reversion, such exercise shall be Seller’s sole remedy with respect to any breach by Buyer of the provisions of Section 2.5 or 2.6 (including any failure of Buyer to achieve a Milestone).

(e) If Seller exercises its Right of Reversion, Seller shall have a non-transferrable, non-sublicensable license to make, use, have made, export, offer for sale and sell any inventions, discoveries, improvements or other technology related to the Medical Device Products conceived or reduced to practice by Buyer prior to the transfer of the Reversion Assets to Seller; provided, however, that such license shall be no broader than necessary to practice the Medical Device Products and provided further, that such license shall not arise without the written consent of Buyer if, prior to Seller’s exercise of its Right of Reversion, a direct competitor of Buyer purchases all or substantially all of the assets or equity interests of Seller. Buyer and Seller shall negotiate in good faith an appropriate and fair royalty and other commercially reasonable terms for such license. If Buyer commercializes any Medical Device Product and thereafter Seller exercises its Right of Reversion, Seller shall grant to Buyer upon Buyer’s request a license to continue to commercialize such Medical Device Product.

Subject to Section 2.5, Buyer shall have sole discretion for making all decisions relating to the commercialization and marketing of Medical Device Products, and will bear all costs of preparing Medical Device Products for market and for obtaining any required governmental approvals.

2.7 Form of Consideration Payable by Buyer. All cash payments shall be made in United States Dollars. Buyer may make any payment required under this Agreement in cash. Notwithstanding anything to the contrary contained in Sections 2.4 and 2.5 above, to the extent that Buyer is not able to pay in cash any part of the cash portion of a Milestone Payment, Buyer may substitute for such part of the cash portion of such Milestone Payment the number of shares of Common Stock equal to the quotient obtained by dividing (x) the amount of the cash component of the Milestone Payment that Buyer has elected to satisfy in whole shares of Common Stock in lieu of payment in cash and (B) 1.20, by (y) the Reference Market Value on the date of payment, with any fraction of a share being treated as provided in Section 2.8 below.

2.8 No Fractional Shares. No certificates or scrip representing fractional shares of Common Stock shall be issued as part of the Closing Consideration or any Milestone Payments, but an amount in cash equal to the aggregate Reference Market Value of such fractional shares shall instead be paid by Buyer to Seller on the date that such Closing Consideration or Milestone Payments are otherwise paid to Seller.
2.9 **Earnout Payments.**

(a) Buyer shall also pay to Seller, subject to the terms of this Section 2.9, earnout payments based on Net Sales as follows (provided that no earnout payment shall be due from Buyer to Seller for any Net Sales except as set forth in Sections 2.9(a)(i) and (ii) below):

(i) With respect to any Non-Spine Product, during the period commencing on the Closing Date and ending on the tenth anniversary of the Closing Date, an amount equal to 10% of Net Sales of such Non-Spine Product; and

(ii) during the period commencing on the Closing Date and ending on the date that no Valid Claims exist with respect to the Cervical Spine Products, an amount equal to 5% of Net Sales of Cervical Spine Products that are subject to Valid Claims.

(b) The earnout payments set forth in Section 2.9(a)(ii) shall be payable on a jurisdiction-by-jurisdiction basis, based on Net Sales in those jurisdictions where Valid Claims exist, and where, but for the sale, conveyance, assignment and transfer of the Medical Device Intellectual Property from Seller to Buyer pursuant to this Agreement, the ownership, design, development, manufacture, marketing or commercial exploitation by Buyer of the Medical Device Products would infringe such Valid Claims. In the event that third-party licenses or other payments to third parties are or would be required in order for Buyer to own, design, develop, manufacture, market or commercially exploit any Medical Device Products as they are currently designed, including, without limitation, any payments required to be made to Ellis Developments Limited pursuant to the Ellis Licence, then the earnout payments to be made under this Section 2.9 with respect to the Net Sales of a specific Medical Device Product in a specific jurisdiction shall be automatically reduced by the aggregate amount required to be paid to such third parties by Buyer with respect to sales of such Medical Device Product in such jurisdiction.

(c) Buyer shall pay the earnout payments set forth in Section 2.9(a) during the respective time periods provided therein within sixty (60) days following each six (6) month anniversary of the Closing Date for Net Sales in the previous six (6) month period. Each earnout payment under this Section 2.9 shall be accompanied by a statement of the amount of Net Sales during the applicable period and such other information as is necessary to determine the amount of the payments to be made to Seller hereunder. All earnout payments payable to Seller shall be paid in U.S. Dollars. Net Sales shall first be calculated in the currency in which the sales were made and then directly converted into U.S. Dollars at the exchange rate reported in the U.S. edition of The Wall Street Journal (or other publication chosen by the parties by mutual written consent from time to time) for the last business day of the period for which such payment is due. Earnout payments not paid within the sixty (60) days following the previous six (6) month period shall accrue interest at the rate of 1% per month from the due date; provided, however, that no interest shall accrue on amounts the payment of which is subject to a good faith dispute or amounts determined to be due after an audit reflecting a discrepancy of less than 5% between amounts paid and amounts that should have been paid.

(d) Buyer shall keep full and accurate books and records of all items necessary to correctly calculate the payments due to Seller hereunder for the latest three calendar years and to correctly calculate the amount spent by Buyer with respect to development,
regulatory approval or commercialization efforts for the Medical Device Products for the period from the Closing Date until the Third Milestone has been achieved or Seller has exercised a Right of Reversion. Upon the request of Seller, and not more than once in any twelve (12) month period, Buyer shall permit an independent public accounting firm reasonably acceptable to Buyer engaged by Seller to examine such books and records (insofar as they relate to such payments or efforts) during normal business hours, on reasonable prior written notice, to audit Buyer’s Net Sales as utilized to calculate the earnout payments due Seller hereunder and to audit Buyer’s expenditures with respect to Medical Device Products; provided, however, that such independent accountants shall not disclose Buyer’s confidential information to Seller, except to the extent such disclosure is necessary to verify the amount of payments due hereunder or expenditures with respect to Medical Device Products. If such accounting firm concludes that earnout payments have been underpaid, then, unless Buyer’s independent accounting firm disagrees with such conclusion, Buyer shall pay, within thirty (30) days of the date that Seller advises Buyer in writing of such unpaid earnout payments, all such unpaid earnout payments. All expenses relating to such audit shall be borne by Seller, unless such audit discloses an underpayment in excess of five percent (5%) with respect to a earnout calculation or results in a Right of Reversion for Seller where none would otherwise exist, in which case such expenses shall be paid by Buyer.

2.10 Transfer Taxes. All use, value-added, gross receipts, excise, registration, stamp duty, stamp duty land tax, sales, transfer or other similar taxes or governmental fees ("Transfer Taxes") imposed, levied or payable by reason of the transactions contemplated by this Agreement (other than any tax based on income) shall be split equally by Buyer and Seller. Buyer and Seller shall cooperate to minimize any Transfer Taxes.

ARTICLE 3
CLOSING

3.1 The Closing.

(a) The transactions contemplated by this Agreement shall be consummated (the “Closing”) at the offices of Gardner Carton & Douglas LLP in Chicago, Illinois on the date hereof, or such other place, time and date as the parties shall agree in writing. The time and date on which the Closing is actually held is referred to herein as the “Closing Date.” The Closing shall be effective at 6:00 p.m. BST on the Closing Date.

(b) At the Closing, Buyer shall deliver to Seller each of the following:

(i) the Closing Cash Consideration;

(ii) the Reimbursement Amounts, by wire transfer of immediately available funds to the same account designated by Seller for receipt of the Closing Cash Consideration;

(iii) Buyer’s portion of the Transfer Taxes payable by reason of the transactions contemplated by this Agreement (other than any tax based on income),
which is estimated to be $12,162.59, by wire transfer of immediately available funds to the same account designated by Seller for receipt of the Closing Cash Consideration;

- (iv) a certificate representing the Closing Shares;
- (v) certified copies of the resolutions duly adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Additional Agreements and the consummation of the transactions contemplated hereby and thereby;
- (vi) the Additional Agreements duly executed by Buyer.

(c) At the Closing, Seller shall deliver to Buyer each of the following:

- (i) physical possession of all the Purchased Assets capable of passing by delivery with the intent that title in such Purchased Assets shall pass upon such delivery;
- (ii) all consents, waivers or approvals listed on Schedule 4.2 hereto;
- (iii) certified copies of the resolutions duly adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the Additional Agreements and the consummation of the transactions contemplated hereby and thereby;
- (iv) good standing certificates for Seller from the Registrar of Companies for England and Wales dated not more than ten (10) days prior to the Closing Date;
- (v) all Records;
- (vi) such other bills of sale, assignments and other instruments of transfer or conveyance as Buyer may reasonably request or as may be otherwise necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery of the Purchased Assets to Buyer; and
- (vii) the Additional Agreements duly executed by Seller.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, subject to the Schedules prepared by Seller relating to this Article 4, Seller hereby represents and warrants to Buyer as follows:

4.1 Organization. Seller is a private company limited by shares duly formed, validly existing and in good standing under the laws of England and Wales. Seller is duly qualified to
carry on the Medical Device Global Operations as now conducted and is in good standing in each of the jurisdictions in which the ownership or leasing of the Purchased Assets or the conduct of the Medical Device Global Operations requires such qualification except where such failure to be so qualified or in good standing would not result in a Material Adverse Event. Seller has full corporate power and authority under its memorandum and articles of association to own or lease and to operate and use the Purchased Assets and to carry on the Medical Device Global Operations as now conducted.

4.2 Authorization.

(a) Seller has full power and authority to execute, deliver and perform this Agreement and each of the Additional Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Additional Agreements by Seller have been duly and validly authorized and approved by Seller’s board of directors. No other corporate proceedings on the part of Seller are necessary to authorize the consummation of the transactions contemplated by this Agreement and the Additional Agreements. This Agreement has been, and the Additional Agreements, upon execution and delivery by Seller, will be duly authorized, executed and delivered by Seller and constitute, or upon execution and delivery will constitute, as the case may be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except (i) as such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors’ rights, and (ii) as the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(b) Except as set forth on Schedule 4.2, neither the execution, delivery and performance of this Agreement or any of the Additional Agreements nor the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will: (i) violate, conflict with or result in the breach of any provision of the articles and memorandum of association of Seller, (ii) violate or conflict with any Requirement of Laws or Governmental Order applicable to Seller, (iii) violate, conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under any agreement listed (or required to be listed) on Schedule 4.9, or result in the creation or imposition of any Encumbrance upon any of the Purchased Assets, or (iv) require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any Person.

4.3 Taxes.

(a) No claim has ever been made by any Governmental Body in any jurisdiction in which no Tax Return is filed by, or with respect to, Seller that Seller may be subject to taxation by that jurisdiction.

(b) Seller is a registered and taxable person for the purposes of the Value Added Tax Act 1994 (UK).
The provisions of Part XV of the Value Added Tax Regulations 1995 (UK) (capital goods scheme) do not apply to any of the Purchased Assets.

All documents (other than those which have ceased to have any legal effect) to which Seller is a party and which are material to the title to the Purchased Assets have been duly stamped and no such documents which are outside the UK would attract stamp duty if they were brought into the UK.

No chargeable interest (as defined under section 48 of the Finance Act 2003 (UK)) has been acquired or held by Seller before Closing in respect of which an additional land transaction return will be required to be filed with a Governmental Body and/or a payment of stamp duty land tax (or similar system in operation in other jurisdictions) made on or after Closing in relation to the Purchased Assets.

All value added tax payable upon the importation of goods, and all excise duties payable to H.M. Revenue and Customs payable in respect of the Purchased Assets have been paid in full, and none of the Purchased Assets is liable to confiscation, forfeiture or distress.

4.4 Condition and Sufficiency of Assets

The Purchased Assets are suitable for the uses to which they are being put or have been put in the ordinary course of business of the Medical Device Global Operations; the Medical Device Intellectual Property constitutes all of the intellectual property assets reasonably necessary to conduct the Medical Device Global Operations as currently conducted; and the Purchased Assets constitute all of the assets owned by Seller and used or held for use primarily in connection with the Medical Device Global Operations.

4.5 Governmental Permits

(a) Seller owns, holds or possesses all licenses, franchises, permits, privileges, immunities, approvals and other authorizations from all Governmental Bodies which are necessary to entitle it to own or lease, operate and use the Purchased Assets and to carry on and conduct the Medical Device Global Operations as currently conducted (collectively, the “Governmental Permits”). Complete and correct copies of all of the Transferred Permits have heretofore been delivered or will be delivered prior to the Closing Date to Buyer by Seller.

(b) (i) Seller has fulfilled and performed its obligations under each of the Governmental Permits, and no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a material breach or default or violation under any such Governmental Permit or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Governmental Permit, or which might adversely affect in any material respect the rights of Seller under any such Governmental Permit; (ii) no notice of cancellation, of default, of violation or of any material dispute concerning any Governmental Permit, or of any event, condition or state of facts described in the preceding clause, has been received by, or is known to, Seller; and (iii) each of the Transferred Permits is valid, subsisting and in full force and effect.
4.6 Title to Purchased Assets. Seller has good title to all of the Purchased Assets, free and clear of all Encumbrances, except for Permitted Encumbrances and those Encumbrances that will be removed at the Closing. Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 3.1(c) above, Seller will thereby transfer to Buyer good title to the Purchased Assets, free and clear of Encumbrances other than Permitted Encumbrances.

4.7 Intellectual Property.

(a) Schedule 4.7(a) sets forth the following:

(i) a complete and accurate list of all Patents, Trademarks and Copyrights, and any applications therefor in respect of any of the foregoing, included in the Medical Device Intellectual Property, which specifies, where applicable, the jurisdictions in which such Medical Device Intellectual Property right has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners and all deadlines (including expiry dates and extensions and renewal dates) occurring within six months of the Closing Date. To Seller's Knowledge, all registered Patents, Trademarks and Copyrights included in the Medical Device Intellectual Property and held by Seller, if any, are valid and subsisting;

(ii) all licenses, sublicenses and other agreements as to which Seller is a party and pursuant to which Seller is authorized to use any Medical Device Intellectual Property belonging to any third party (provided, however, that Seller need not list object code end-user licenses granted to end-users in the ordinary course of business that permit use of software products without a right to modify, distribute or sublicense the same), including the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty, milestone or upfront payment and the term thereof; and

(iii) all licenses, sublicenses and other agreements as to which Seller is a party and pursuant to which Seller has granted to any third party any right to use any of the Medical Device Intellectual Property, including the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty and the term thereof.

Seller has provided Buyer with access to complete and accurate copies of all applications, registrations, agreements and other documents referenced in Schedule 4.7(a).

(b) Seller is not in violation in any material respect of any license, sublicense or agreement described or to be described on Schedule 4.7(a) and, except for any consents to transfer required under the Contracts, the execution and delivery of this Agreement by Seller, and the consummation of the transactions contemplated hereby, (A) will not cause Seller to be in violation or default under any such license, sublicense or agreement, (B) entitle any Person to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement or (C) will not require Seller to repay any funds already received by it from any Person.
(c) Except as set forth on Schedule 4.7(c), Seller has all right, title and interest in and to and is the sole and exclusive legal and beneficial owner or licensee of (free and clear of any Encumbrances other than Permitted Encumbrances), all the Medical Device Intellectual Property, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any Person in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which the Medical Device Intellectual Property is being used. Seller has taken commercially reasonable steps to protect the Medical Device Intellectual Property. No claims with respect to the ownership of, or otherwise questioning Seller’s rights to, any of the Medical Device Intellectual Property have been asserted or are threatened by any person nor, to Seller’s Knowledge, are there any valid grounds for any such claim.

(d) To Seller’s Knowledge, neither the manufacturing, use and/or sale of the Medical Device Products nor the conduct of the Medical Device Global Operations has infringed, misappropriated or conflicted with any patents, trademarks, copyrights, trade secrets or other intellectual property of any Person. Seller has not received any claims nor, to Seller’s Knowledge, are any claims threatened or do valid grounds exist for any claims to the effect that the manufacture, sale, licensing or use of any of the Medical Device Products as now manufactured, used or sold by or on behalf of Seller infringes the intellectual property rights of any Person.

(e) To Seller’s Knowledge, there is no unauthorized use, infringement or misappropriation of any of the Medical Device Intellectual Property by any Person, including any employee or former employee of Seller.

(f) To Seller’s Knowledge, none of the Medical Device Intellectual Property or the Medical Device Products is subject to any outstanding decree, order, judgment or stipulation restricting in any manner the licensing thereof by Seller.

(g) Seller has a policy requiring each employee and consultant to execute customary proprietary information and confidentiality agreements, and all current employees and consultants and former key employees and consultants of Seller have executed such an agreement, vesting ownership of any Medical Device Intellectual Property created by them in Seller. To Seller’s Knowledge, no circumstances exist which will result in any liability to Seller, and there have not been any claims made to Seller from any person retained, commissioned, employed or otherwise engaged by Seller, pursuant to Section 40 of the Patents Act of 1977 (UK) or equivalent legislation anywhere in the world.
4.8 **Books of Account.** The books, records and accounts of Seller (i) give a true and fair view of the matters which are required by law to appear in them; (ii) have been properly maintained and contain up-to-date (up to the Closing Date) and accurate records of all matters required to be entered in them by the Companies Act 1985 (UK); and (iii) accurately present all transactions and all assets and liabilities of Seller with respect to the Medical Device Global Operations; provided, however, that Seller has not maintained separate books, records and accounts for the Medical Device Global Operations.

4.9 **Contracts.**

(a) Set forth on Schedule 4.9 is a list of each agreement, arrangement, commitment, license or other instrument, written or oral, that is material to the Medical Device Global Operations as presently conducted (collectively, the “Contracts”). Each such Contract constitutes a valid, legal and binding obligation of Seller and, to Seller’s Knowledge, of the other parties thereto; and no defenses, offsets or counterclaims thereto have been asserted in writing by any party thereto. Seller has not received written notice of any default under any Contract. To Seller’s Knowledge, there are no existing defaults or events of default or events which with notice or lapse of time or both would constitute defaults under any Contract. There exists no actual or threatened termination, cancellation or limitation of, or any amendment, modification or change to any Contract.

(b) Seller is neither renegotiating any of the Transferred Agreements or the Ellis Licence nor is it paying liquidated damages in lieu of performance thereunder. The Transferred Agreements and the Assigned Ellis Licence Rights may be transferred to Buyer pursuant to this Agreement and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder and without the consent, approval or act of, or the making of any filing with, any Person. Seller has heretofore delivered complete and correct copies of each Transferred Agreement and the Ellis Licence to Buyer.

4.10 **No Violation, Litigation or Regulatory Action.** (a) The Medical Device Global Operations and the Purchased Assets and their current uses comply in all material respects with all applicable Requirements of Laws and Governmental Orders, (b) Seller has complied in all material respects with all Requirements of Laws and Governmental Orders which are applicable to the Purchased Assets or the Medical Device Global Operations, (c) no Governmental Body has at any time challenged or questioned the legal right of Seller to sell any of its products or to provide any of its services in the present manner or as contemplated in the conduct of the Medical Device Global Operations and (d) Seller has complied in all material respects with the contracts of employment of the Transferred Employees and with all applicable laws, regulations and codes of practice relating to them. Further, to Seller’s Knowledge, no claim, enquiry or investigation in relation to the Transferred Employees or former employees has been made or threatened against Seller or against any person whom Seller is or may be liable to indemnify or compensate. Except as set forth on Schedule 4.10, there are no lawsuits, claims, suits, proceedings or investigations pending or threatened in writing against or affecting the Medical Device Global Operations or the Transferred Employees; there is not, and during the three years preceding the date of this agreement there has not been any industrial action affecting Seller; and there are no lawsuits, suits or proceedings pending in which Seller is the plaintiff or claimant.
There is no action, suit or proceeding pending or threatened which questions the legality of the transactions contemplated by this Agreement.

4.11 **No Finder.** Except as set forth on Schedule 4.11, none of Seller, Seller Parent nor any Person acting on their behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary, for or on account of the transactions contemplated by this Agreement.

4.12 **Insurance.** Set forth on Schedule 4.12 is a list and brief description of each insurance policy to which Seller has been a party, a named insured or otherwise the beneficiary of coverage at any time in the past two years in connection with the Purchased Assets or the Medical Device Global Operations and of individual claims in excess of $50,000, and similar claims in excess, in the aggregate, of $200,000 during any twelve (12) month period, made by Seller within two years prior to the date hereof, under any insurance policies. Such insurance is adequate in kind and amount to cover known insurable risks of Seller and is, and will continue to be, in full force and effect for the benefit of Buyer and the Purchased Assets.

4.13 **FDA and Regulatory Matters.**

(a) With respect to the Medical Device Products, (i) (A) Seller has obtained all necessary and applicable approvals, clearances, authorizations, licenses and registrations required by the United Kingdom and French Governmental Bodies to permit the design, development, pre-clinical and clinical testing, manufacture, and labeling of Cervical Spine Products in the United Kingdom and the clinical testing of Cervical Spine Products in France where it currently conducts such activities (the “Activities to Date”) with respect to the Cervical Spine Product (collectively, the “Medical Device Product Licenses”); (B) Seller is in compliance with all terms and conditions of each Medical Device Product License and with all applicable laws pertaining to the Activities to Date with respect to each Medical Device Product which is not required to be the subject of a Medical Device Product License; (C) Seller is in compliance with all applicable laws regarding registration, license, and certification for each site at which a Medical Device Product is manufactured, labeled, or distributed; and (D) to the extent that any Medical Device Product has been sold outside of the United States, Seller has sold such Medical Device Product in compliance in all material respects with applicable law; (ii) all manufacturing operations performed by or on behalf of Seller have been and are being conducted in all material respects in compliance with ISO 9001 and ISO 13485 and regulations in the European Union; (iii) all non-clinical laboratory studies of Medical Device Products under development, sponsored by Seller and intended to be used to support regulatory clearance or approval, have been and are being conducted in compliance with the regulations in the European Union; and (iv) Seller is in compliance with all applicable reporting requirements for all Medical Device Product Licenses or plant registrations described in clause (i) above, including, but not limited to, applicable adverse event reporting requirements outside the United States under applicable law.

(b) To Seller’s Knowledge, Seller is in compliance with all United Kingdom national and local laws applicable to the maintenance, compilation and filing of reports, including medical device reports, with regard to the Medical Device Products. There have been
no adverse event reports or complaints related to the Medical Device Products through the date hereof.

(c) Seller has not received any written notice or other written communication from the FDA or any other Governmental Body (i) contesting the pre-market clearance or approval of, the uses of or the labeling and promotion of any of the Medical Device Products, or (ii) otherwise alleging any violation of any laws by Seller.

(d) There have been no recalls, field notifications or seizures ordered or adverse regulatory actions taken or threatened by the FDA or any other Governmental Body with respect to any of the Medical Device Products, including any facilities where any such Medical Device Products are produced, processed, packaged or stored and Seller has not, within the last three (3) years, either voluntarily or at the request of any Governmental Body, initiated or participated in a recall of any Medical Device Product or provided post-sale warnings regarding any Medical Device Product.

(e) Seller has conducted all of its clinical trials with reasonable care and, to Seller’s Knowledge, such trials have been conducted in accordance with all applicable laws and the stated protocols for such clinical trials.

(f) To Seller’s Knowledge, all filings with and submissions to any Governmental Body in the United Kingdom and France made by Seller with regard to the Medical Device Products, whether oral, written or electronically delivered, were true, accurate and complete as of the date made, and, to the extent required to be updated, as so updated remain true, accurate and complete as of the date hereof, and do not materially misstate any of the statements or information included therein, or omit to state a material fact necessary to make the statements therein not misleading.

(g) Seller has not engaged in any written correspondence with, or made any written submissions to, the FDA with respect to the Cervical Spine Products or other Medical Device Products.

4.14 Products; Product Liability. Set forth on Schedule 4.14(a) is a list of all of the Medical Device Products existing as of the Closing Date. Each of the Medical Device Products sold by Seller: (i) is, and at all times up to and including the sale thereof has been, in compliance in all material respects with all Requirements of Laws and (b) is, and at all relevant times has been, fit for the ordinary purposes for which it is intended to be used and conforms in all material respects to any promises or affirmations of fact made in all regulatory filings pertaining thereto and made on the container or label for such product or in connection with its sale. There have been no complaints received by Seller during the last three years with respect to Medical Device Products.

4.15 Investment Representations.

(a) The issuance of the Common Stock by Buyer is made in reliance upon Seller’s representation to Buyer, which by Seller’s execution of this Agreement Seller hereby confirms, that the Common Stock to be received by Seller will be acquired for investment for
Seller’s own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof and that Seller has no present intention of selling, granting any participation in, or otherwise distributing any of the Common Stock; provided, however, that the foregoing shall not be deemed to limit Seller’s rights under the Registration Rights Agreement. By executing this Agreement, Seller further represents that it has no present contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to such person or to any third person, with respect to any of the Common Stock.

(b) Seller understands and acknowledges that the issuance and sale of the Common Stock pursuant to this Agreement will not be registered under the Securities Act on the grounds that the offering and sale of securities contemplated by this Agreement are exempt from registration pursuant to Section 4(2) of the Securities Act and that the Common Stock may not be resold except upon their subsequent registration or pursuant to an exemption from the registration requirements, and that Buyer’s reliance upon such exemption is predicated upon Seller’s representations as set forth in this Agreement.

(c) Seller represents that: (i) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Shares; (ii) it believes it has received all the information it has requested from Buyer and considers necessary or appropriate for deciding whether to obtain the Shares; (iii) it has had the opportunity to discuss Buyer’s business, management, and financial affairs with Buyer’s management; (iv) it has the ability to bear the economic risks of its prospective investment; and (v) it is able, without materially impairing its financial condition, to hold the Shares for an indefinite period of time and to suffer a complete loss on its investment; provided, however, that the foregoing shall not be deemed to limit Seller’s rights under the Registration Rights Agreement.

(d) Seller qualifies as an “accredited investor” within the meaning of Regulation D of the rules and regulations promulgated under the Securities Act.

4.16 No Royalties or Similar Payments to Third Parties. There are no royalties or other similar payments due to third parties in respect of any Medical Device Products.

4.17 Employment Matters.

(a) To Seller’s Knowledge, no Transferred Employee has within a period of five years before the date of this Agreement been involved in any criminal proceedings relating to the Medical Device Global Operations and Seller is not aware of any circumstances which are likely to give rise to any such proceedings. Set forth on Schedule 4.17 are:

(i) The names and ages of all Transferred Employees together with the dates their employment and period of continuous employment with Seller commenced;

(ii) Full particulars of employment (including notice period, profit sharing, commission, bonus arrangements, rate of emoluments as at the Closing Date and any other benefits or emoluments whether contractual or discretionary) of all Transferred Employees;
(iii) Full particulars of any agreement for the provision of consultancy services or the services of personnel to Seller in or relating to the Medical Device Global Operations and of the terms applicable to the secondment to Seller in the Medical Device Global Operations of any person including fees payable, restrictive covenants and notice periods; and

(iv) A description of the constitution of any body of employee representatives, staff association or trade union or the like in relation to the Medical Device Global Operations.

(b) Except as set forth on Schedule 4.17, there is no arrangement in operation by or in relation to the Transferred Employees under which any such employee is entitled to remuneration of any sort (including, without limitation, bonus, commission or profit sharing) by reference to the turnover, profits or performance of Seller or of the whole or any part of Medical Device Global Operations and, to Seller’s Knowledge, no such arrangement has been operated on a customary or discretionary basis.

(c) Except through Buyer, to Seller’s Knowledge, no proposal, assurance or commitment has been communicated to any Transferred Employee regarding any change to their terms of employment (or terms of appointment or engagement in the case of officers and consultants) or working conditions by Seller, and no negotiations have commenced for any such matter.

(d) All subsisting contracts of employment and any agreements set forth at Schedule 4.17 to which Seller is a party are terminable by it on three months’ notice or less without compensation (other than compensation pursuant to the Employment Rights Act 1996 (UK)).

(e) Seller has no liability as at the Closing Date to any Transferred Employee or any representative of the same to pay compensation, damages, a redundancy payment, a protective award, a severance payment or any other payment or award or is under any obligation to provide or continue any benefit (including the provision of a reference) either pursuant to, or as a consequence of failing to comply with any statute, regulation or agreement (including an employment agreement, consultancy agreement, directors service agreement, settlement, compromise or COT3 agreement) and no such sums have been paid or benefits provided (whether pursuant to a legal obligation or ex gratia).

(f) There is no term of employment for any Transferred Employee which provides that a change of control (including a sale or disposal of all or part of Seller’s business) shall entitle the Transferred Employee to treat the change of control as amounting to a breach of the contract or entitling them to any payment or benefit whatsoever or entitling them to treat themselves as redundant or otherwise dismissed or released from any obligation.

(g) Seller does not have an obligation to make any payment on redundancy in excess of the statutory redundancy payment to the Transferred Employees and Seller has not operated any discretionary practice of making any such excess payments.

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Seller has not made any loan or advance, or provided any financial assistance to any Transferred Employee, which is outstanding.

No Transferred Employee have become an employee of Seller by virtue of a “relevant transfer” as defined in the Employment Regulations.

The Transferred Employees are the only employees primarily employed or assigned to the Medical Device Global Operations.

4.18 Pensions.

(a) Except pursuant to Stakeholder Pension Plan for employees of Pearsalls Limited (the “Disclosed Scheme”) Seller has not paid, provided or contributed towards, and is not, and never has been, under any obligation or commitment (whether or not legally enforceable) to pay, provide or contribute towards any pension, gratuity, superannuation, life assurance, medical, accident or disability benefit or otherwise to provide “relevant benefits” within the meaning of section 612(1) of the Income and Corporation Taxes Act 1988 (together “Benefits”) to or for or in respect of any Transferred Employee or any spouse, ex-spouse, child or dependent of any such Transferred Employee.

(b) Other than in relation to the Disclosed Scheme, no proposal to any of the Transferred Employee has been announced or provision made to establish any schemes, arrangement or practice for the provision of any Benefits.

(c) No power or discretion has been exercised under the Disclosed Scheme to augment benefits, provide new or additional benefits for or in respect of any Transferred Employee or any spouse, ex-spouse, child or dependent of any such Transferred Employee.

(d) No promise, assurance or guarantee (whether legally enforceable or not and whether in writing or not) has been given to any Transferred Employee or any spouse, ex-spouse, child or dependent of any such Transferred Employee that any benefits under the Disclosed Scheme will be calculated wholly or partly by reference to any person’s remuneration or equate (approximately or exactly) to any particular level or amount.

(e) The Disclosed Scheme is a money purchase scheme within the meaning of section 181(1) Pension Schemes Act 1995 (UK).

(f) No Transferred Employee has been excluded from, or has had benefits limited under, the Disclosed Scheme, whether directly or indirectly, on grounds of sex or part-time employment.

(g) There are no and have never been any civil, criminal, arbitration, administrative or other proceeding (including without limitation proceedings brought by or before the Pensions Ombudsman) or dispute concerning any of the Transferred Employees or their spouses, ex-spouses, children or dependents in relation to the Disclosed Scheme. To Seller’s Knowledge, none are pending or threatened and there are no circumstances which might give rise to such proceedings.

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4.19 Expenses and Liabilities. Attached as Schedule 4.19 are (i) a schedule listing all of the expenses and liabilities relating to the Medical Device Global Operations as of and for the fiscal year ending December 31, 2004 (the “2004 Expense and Liability Schedule”); (ii) a schedule listing all of the expenses and liabilities relating to the Medical Device Global Operations as of and for the six (6) months ended June 30, 2005 (the “2005 Expense and Liability Schedule”, and together with the 2004 Expense and Liability Schedule, the “Expense and Liability Schedules”). To Seller’s Knowledge, the Expense and Liability Schedules present fairly the expenses and liabilities of the Medical Device Global Operations as of the dates and during the periods indicated therein.

4.20 No Changes. Since the date of the 2005 Expense and Liability Schedule, there has not been, occurred or arisen any change or any event, occurrence, development or fact that alone or in the aggregate has resulted in, or would reasonably be expected to result in, a Material Adverse Event.

4.21 Insolvency.

(a) Seller is solvent, meaning that no circumstance exists by virtue of which, by virtue of the definitions contained in section 123 of the Insolvency Act 1986 (UK) ("Insolvency Act"), Seller is deemed unable to pay its debts.

(b) (i) No receiver or administrative receiver has been appointed in respect of the whole or any part of the assets or undertaking of Seller (including any of the Purchased Assets); (ii) no administration order has been made and no petition has been presented for such an order in respect of Seller; (iii) no meeting has been convened at which a resolution will be proposed, no resolution has been passed, no petition has been presented and no order has been made for the winding-up of Seller; (iv) Seller has not stopped or suspended payment of its debts, become unable to pay its debts or otherwise become insolvent in any relevant jurisdiction; (v) no unsatisfied judgment, order or award is outstanding against Seller in relation to the business of the Medical Device Global Operations and no written demand under section 123(1)(a) of the Insolvency Act has been made against Seller and no distress, distraint, charging order, garnishee order, or execution has been levied on, or other process commenced against, any part of the Purchased Assets; (vi) no voluntary arrangement has been proposed or implemented under section 1 of the Insolvency Act in respect of Seller nor any scheme of arrangement proposed or implemented under section 425 of the Companies Act 1985 (UK), nor any scheme for the benefit of creditors generally proposed or implemented, whether or not under the protection of the court and whether or not involving a reorganization or rescheduling of debt; and (vii) no event has occurred causing or that upon intervention or notice by any third party may cause any floating charge created by Seller to crystallize over the business of the Medical Device Global Operations or any Purchased Asset or any charge created by it to become enforceable over the business of the Medical Device Global Operations or any Purchased Asset nor has any such crystallization occurred nor is such enforcement in process.
(c) No circumstances have arisen which entitle any Person to take any action, appoint any Person, commence proceedings or obtain any order of the type mentioned in subparagraphs (a) and (b) above.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Seller as follows:

5.1 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

5.2 Authorization. Buyer has full power and authority to execute, deliver and perform this Agreement, each of the Additional Agreements and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Additional Agreements by Buyer have been duly authorized and approved by the board of directors of Buyer, and do not require any further authorization or consent of Buyer or its shareholders. This Agreement has been, and the Additional Agreements, upon execution and delivery by Buyer, will be duly authorized, executed and delivered by Buyer and constitute, or upon execution and delivery by Buyer will constitute, as the case may be, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, except (i) as such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors’ rights, and (ii) as the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

5.3 Non-Contravention; Consents. Neither the execution, delivery and performance by Buyer of this Agreement or any of the Additional Agreements nor the consummation of the transactions contemplated hereby and thereby nor compliance with the terms, conditions and provisions hereof or thereof will (i) violate, conflict with or result in any breach of any provision of the certificate of incorporation or bylaws of Buyer, (ii) violate or conflict with any Requirement of Laws or Governmental Order applicable to Buyer, (iii) violate, conflict with, result in a breach of the terms, conditions, or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under any agreement that is “material” to Buyer within the meaning of the Exchange Act. Except as may be required by the Exchange Act or by the terms of the Registration Rights Agreement, Buyer was not, is not and will not be required to make any filing with or give any notice to or obtain any consent from any Person in connection with the execution, delivery and performance by Buyer of this Agreement or the Additional Agreements or the consummation of the transactions contemplated hereby and thereby.

5.4 Validity of Shares. The Common Stock will, when issued in accordance with the provisions of this Agreement, be duly authorized, validly issued, fully paid and non-assessable.
5.5  **No Finder.** Neither Buyer nor any Person acting on its behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary, for or on account of the transactions contemplated by this Agreement.

5.6  **Securities Filings.** Buyer has made available to Seller at www.sec.gov, true and complete copies of (i) its Annual Report on Form 10-K for the year ended December 31, 2004 as filed with the SEC, and (ii) all other reports and amendments thereto (including Quarterly Reports on Form 10-Q and Current Reports on Form 8-K) filed by Buyer with the SEC since December 31, 2004. As of their respective dates, and as of the date of the last amendment thereof, if amended after filing, to Buyer’s knowledge, none of such reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**ARTICLE 6**

**ADDITIONAL AGREEMENTS**

6.1  **Taxes.**

(a) Subject to Section 2.10, Seller shall be responsible for and pay all Taxes of Seller, its Affiliates, the Medical Device Global Operations and the Purchased Assets arising at any time with respect to periods ending on or prior to the Closing Date, including the portion of real, personal or other property Taxes attributable to such periods, and all such Taxes shall constitute “Retained Liabilities” hereunder.

(b) The Purchase Price shall be allocated as set forth on Schedule 6.1(b). Any Tax Return filed by a party shall be consistent with such allocations, unless otherwise required by a “determination” as defined in Section 1313(a) of the U.S. Internal Revenue Code.

(c) To the extent relevant to the Purchased Assets and the Medical Device Global Operations, Seller shall (i) provide Buyer with such assistance as may reasonably be required in connection with the preparation of any Tax Return, amended tax return or claim for refund of any Tax, and the conduct of any audit or other examination by any taxing authority or in connection with judicial or administrative proceedings relating to any liability for Taxes and (ii) retain and provide Buyer with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit or examination, or other tax proceeding. Seller shall retain all relevant documents, including prior years’ Tax Returns, supporting work schedules and other records or information that may be relevant to such returns for the statutory period applicable to such Tax Returns and shall not destroy or otherwise dispose of any such records without the prior written consent of Buyer.

(d) To the extent relevant to the Purchased Assets and the Medical Device Global Operations, Buyer shall provide Seller with such assistance, records and information as may be reasonably required in connection with the preparation of any Tax Return, amended tax return or claim for refund of any Tax, and the conduct of any audit or other examination by any
6.2 **Noncompetition Agreement.** For and in consideration of the transactions contemplated herein, during the period commencing on the Closing Date and ending on the third anniversary of the Closing Date (the “Noncompetition Period”), none of Seller, Seller Parent, or any of their Affiliates shall engage in any Competitive Activity in the Territory. Seller agrees that each of the restrictions contained in this Section 6.2 goes no further than is necessary to protect the legitimate business interest of Buyer. Notwithstanding the foregoing, the provisions of this Section 6.2 shall not prevent Seller, Seller Parent, or any of their Affiliates from beneficially owning up to five percent (5%), on a full-diluted basis, of the total shares of all classes of stock outstanding of any corporation having securities listed on the New York Stock Exchange, the American Stock Exchange, or other stock exchange or traded on the Nasdaq Stock Market.

6.3 **Restrictions on Securities.**

(a) Seller covenants that in no event will it dispose of any of the shares of Common Stock received by it pursuant to the terms of this Agreement unless and until: (i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or (ii) (A) Seller shall have complied with the requirements of the Securities Act applicable to such disposition of such shares including, without limitation, the applicable requirements of Rule 144 regarding volume, manner of sale and other matters, and (B) Seller shall have furnished Buyer at Seller’s expense an opinion of counsel, reasonably satisfactory to Buyer that such disposition will not require registration of such securities under the Securities Act; provided that Buyer shall not require an opinion of counsel for routine sales of shares pursuant to Rule 144.

(b) All certificates for the shares of Common Stock to be issued to Seller hereunder shall bear the following restrictive legend:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”). SUCH SECURITIES MAY NOT BE TRANSFERRED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, REGISTRATION UNDER THE ACT IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE ACT OR UNLESS SOLD PURSUANT TO RULE 144 OF THE ACT.”

The certificates evidencing the shares of Common Stock shall also bear any legend required by the Commissioner of Corporations of the State of California or required pursuant to any state, local or foreign law governing such securities.
The legend set forth in subsection (b) above shall be removed and Buyer shall issue a certificate without such legend to the holder of shares of Common Stock upon which it is stamped, if: (i) the shares represented by such certificate have been sold pursuant to an effective registration statement under the Securities Act; (ii) in connection with the resale of such shares, such holder provides Buyer with an opinion of counsel, in form, substance and scope reasonably acceptable to Buyer, to the effect that a sale or transfer of such shares may be made without registration under the Securities Act; or (iii) such holder provides Buyer with reasonable assurances that such shares have been sold under Rule 144 or can be sold under Rule 144(k).

6.4 Insurance. Seller shall maintain, for a period of two (2) years following the Closing Date (the “Insurance Period”), insurance coverage that is adequate in kind and amount reasonably intended to cover insurable risks relating to any actions taken by Seller prior to the Closing Date with respect to the Purchased Assets. Seller shall remain in full compliance with all terms and conditions of such insurance policies, and agrees to pay when due and payable all premiums and other amounts required to be paid in order to maintain such coverage in full force and effect for the duration of the Insurance Period.

6.5 Copies of Records. Notwithstanding the provisions of Section 2.1, Seller shall be permitted to keep copies of any Records or other documents included in the Purchased Assets but which Seller must retain in order to comply with Requirements of Laws or which would facilitate Seller’s fulfillment of its obligations under the Exclusive Manufacturing Agreement or the Services Agreement.

6.6 Notice to Ellis Developments. Within fourteen (14) days after the execution of this Agreement by Seller, Seller shall notify Ellis Developments Limited of the assignment to Buyer of the Assigned Ellis License Rights and the name and address of Buyer.

ARTICLE 7
INDEMNIFICATION

7.1 Grant of Indemnity.

(a) Indemnification by Seller and Seller Parent. As an inducement to Buyer to enter into this Agreement and the Additional Agreements, and acknowledging that Buyer is relying on the indemnification provided in this Article 7 in entering into this Agreement and the Additional Agreements, each of Seller and Seller Parent agrees, on a joint and several basis, to indemnify, defend and hold harmless Buyer and its Affiliates, parent corporation and subsidiaries, and their respective employees, officers, directors, representatives, agents, counsel, successors and assigns (collectively, “Buyer Affiliates”), from and against any claims, losses, liability, obligations, lawsuits, judgments, settlements, deficiencies, damages, costs or expenses of whatever nature, including, without limitation, interest, penalties, attorneys’ fees, costs of investigation and all amounts paid in defense or settlement of the foregoing, reduced by and to the extent of any insurance proceeds received with respect to any of the foregoing (collectively “Claims and Losses”), suffered or incurred by Buyer or Buyer Affiliates as a result of or in connection with the following: (i) the inaccuracy in any representation or breach of any warranty
of Seller contained in this Agreement; (ii) a breach of any obligation, covenant or agreement of Seller or Seller Parent in this Agreement; (iii) any Excluded Asset; (iv) any failure by Seller to satisfy the Retained Liabilities; or (v) Medical Device Products implanted prior to the Closing.

(b) **Indemnification by Buyer.** As an inducement to Seller to enter into this Agreement and the Additional Agreements, and acknowledging that Seller is relying on the indemnification provided in this Article 7 in entering into this Agreement and the Additional Agreements, Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, employees, officers, directors, representatives, agents, counsel, successors and assigns (collectively, “Seller Affiliates”), from and against any Claims and Losses suffered or incurred by Seller or Seller Affiliates as a result of or in connection with the following: (i) the inaccuracy in any representation or breach of any warranty of Buyer contained in this Agreement; (ii) a breach of any obligation, covenant or agreement of Buyer in this Agreement; (iii) any failure by Buyer to satisfy the Assumed Liabilities; (iv) Post-Closing Transferred Employee Obligations; or (v) Medical Device Products implanted on or after the Closing.

7.2 **Indemnification Procedures.**

(a) (i) In order for an Indemnified Party to be entitled to any indemnification provided for under this Article 7 in respect of, arising out of or involving a claim made by any third party against the Indemnified Party (a “Third Party Claim”), the Indemnified Party must notify the Indemnifying Party in writing of the Third Party Claim (a “Third Party Claim Notice”) promptly following receipt by such Indemnified Party of written notice of the Third Party Claim, which notification, to be a valid Third Party Claim Notice (a “Valid Third Party Claim Notice”), must be accompanied by a copy of the written notice, if any, of the third party claimant to the Indemnified Party asserting the Third Party Claim; provided, that the failure to provide such Third Party Claim Notice promptly (so long as a Valid Third Party Claim Notice is given before the expiration of the applicable period set forth in Section 7.3) shall not affect the obligations of the Indemnifying Party hereunder except to the extent the Indemnifying Party is prejudiced thereby. The Indemnified Party shall deliver to the Indemnifying Party copies of all other notices and documents (including court papers), if any, received by the Indemnified Party relating to the Third Party Claim.

(ii) The Indemnifying Party shall have the right to defend against any such Third Party Claim (including to conduct any proceedings or settlement negotiations) with counsel of its own choosing. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim (including the right to participate in any settlement negotiations) and to employ its own counsel (it being understood that the Indemnifying Party shall control such defense and settlement negotiations), at its own expense, provided, however, that if the Indemnified Party reasonably concludes, based on reasonable advice from counsel, that the Indemnifying Party and the Indemnified Party have adversely conflicting interests with respect to such Third Party Claim, the reasonable fees and expenses of counsel to the Indemnified Party solely in connection therewith shall be considered “Claims and Losses” for purposes of this Agreement; provided, however, that in no event shall the Indemnifying Party be responsible for the fees and expenses of more than one counsel for all Indemnified Parties. Whether or not the Indemnified Party participates in the defense of any Third Party Claim, the Indemnified Party shall be entitled to reasonable notice of all court appearances and settlement
negotiations and, to the extent requested by the Indemnified Party, copies of all proceedings filed with any Governmental Authority in connection with such Third Party Claim. Prior to the time the Indemnified Party is notified by the Indemnifying Party as to whether the Indemnifying Party will assume the defense of a Third Party Claim, the Indemnified Party shall take all actions reasonably necessary to timely preserve the collective rights of the parties with respect to such Third Party Claim, including responding timely to legal process. If the Indemnifying Party shall decline to assume the defense of a Third Party Claim (or shall fail to notify the Indemnified Party of its election to defend such Third Party Claim) within thirty (30) days after the giving by the Indemnified Party to the Indemnifying Party of a Valid Third Party Claim Notice with respect to the Third Party Claim, the Indemnified Party shall defend against the Third Party Claim and the Indemnifying Party shall be liable to the Indemnified Party for all reasonable fees and expenses incurred by the Indemnified Party in the defense of the Third Party Claim, including the reasonable fees and expenses of counsel employed by the Indemnified Party, if and to the extent that the Indemnifying Party is responsible to indemnify for such Third Party Claim and such fees and expenses shall be considered “Claims and Losses” for purposes of this Agreement. Regardless of which party assumes the defense of a Third Party Claim, the parties agree to cooperate with one another in connection therewith. Such cooperation shall include providing records and information that are relevant to such Third Party Claim, and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process; provided, that the Indemnifying Party shall reimburse the Indemnified Party for its reasonable out-of-pocket expenses incurred in connection with the fulfillment of the Indemnified Party’s obligations under this sentence. Whether or not the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any liability, consent to the entry of judgment with respect to, or settle, compromise or discharge, such Third Party Claim without the Indemnifying Party’s prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), provided, however, that the Indemnified Party may admit liability, consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge such Third Party Claim without the consent of the Indemnifying Party if it releases the Indemnifying Party from any liability with respect to the Third Party Claim, or if, because of the application of the Deductible the Indemnifying Party would have no liability with respect thereto. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall have the right to consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge, such Third Party Claim; provided, however, that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed or conditioned), consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge, any Third Party Claim if such judgment, settlement, compromise or discharge involves equitable or other non-monetary damages or otherwise requires the Indemnified Party or any of its Affiliates to pay any amount to any Person, including the Indemnifying Party, or to take any action or refrain from taking any action (other than the execution of a customary release or covenant not to sue). Any final and non-appealable judgment entered or settlement agreed upon with respect to a Third Party Claim shall be binding upon the Indemnifying Party, and shall be paid within ten (10) days of the date of the relevant final judgment or settlement agreement.
In order for an Indemnified Party to be entitled to any indemnification provided for under this Article 7 in respect of a claim that does not involve a Third Party Claim being asserted against such Indemnified Party (an “Other Claim”), the Indemnified Party must promptly notify the Indemnifying Party in writing of such Other Claim (the “Other Claim Notice”), which notification, to be a Valid Other Claim Notice (a “Valid Other Claim Notice”), must certify that the Indemnified Party has in good faith already sustained some (though not necessarily all) Claims and Losses with respect to such claim. The failure by any Indemnified Party to notify the Indemnifying Party promptly (so long as a Valid Other Claim Notice is given before the expiration of the applicable period set forth in Section 7.3) shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party under Section 7.1, except to the extent that the Indemnifying Party has been prejudiced by such failure. If the Indemnifying Party does not notify the Indemnified Party in writing within sixty (60) days from its receipt of an Other Claim Notice that the Indemnifying Party disputes such Other Claim, the Other Claim specified by the Indemnified Party in the Other Claim Notice shall be deemed a liability of the Indemnifying Party hereunder and, within thirty (30) days of such date shall be paid by the Indemnifying Party to the Indemnified Party. Any final and non-appealable judgment entered or settlement agreed upon with respect to an Other Claim shall be binding upon the Indemnifying Party, and shall be paid within thirty (30) days of the date of the relevant final judgment or settlement agreement.

7.3 Survival. All the representations and warranties of Seller and Seller Parent contained in Article 4 and of Buyer in Article 5 above shall survive the Closing hereunder and shall continue in full force and effect after such Closing for a period of 24 months after the Closing Date. The indemnification obligations of each of Seller and Seller Parent under this Article 7 shall expire on the date that is 24 months following the Closing Date; provided, however, that any claim pending on the expiration of the survival period for which a Valid Third Party Claim Notice or Valid Other Claim Notice has been given on or before such expiration date may continue to be asserted and indemnified against until finally resolved.

7.4 Limitations on Indemnification Obligations. Any recovery by Buyer for indemnification shall be limited as follows: (a) Buyer shall not be entitled to any recovery unless a claim for indemnification is made in accordance with Section 7.2, so as to constitute a Valid Claim Notice, and within the time period of survival set forth in Section 7.3; (b) Buyer shall not be entitled to recover any amount for indemnification claims under Section 7.1(a)(i) unless and until the amounts that Buyer is entitled to recover in respect of such claims exceed, in the aggregate, $200,000 (the “Deductible”), in which event (subject to clause (c) below) the entire amount that Buyer is entitled to recover in respect of such claims less the Deductible shall be payable; and (c) the maximum amount recoverable by Buyer for indemnification claims under Section 7.1(a)(i) shall in the aggregate be equal to 50% of all amounts paid at the time of each claim or thereafter by Buyer to Seller under this Agreement (the “Cap”); provided, however, that such limitations in (b) and (c) shall not apply in respect of any indemnification obligations of Seller arising as a result of the untruth or inaccuracy of any representation or warranty set forth in Sections 4.2 (Authorization), or 4.6 (Title to Purchased Assets) or 4.11 (No Finder). No Claims and Losses shall be included in determining whether the Deductible has been reached unless a Valid Claim Notice seeking indemnification for such Claims and Losses has been given by Buyer to Seller.
ARTICLE 8

GENERAL PROVISIONS

8.1 Survival of Obligations. All representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement, subject to Section 7.3.

8.2 Confidentiality. Each of Buyer, Seller and Seller Parent agrees that it will keep confidential all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the transactions contemplated by this Agreement (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents, including but not limited to the content and terms of this Agreement, all in accordance with the terms of the Nondisclosure Agreement and that any written communications between the parties contemplated by this Agreement and any copies of records retained under Section 6.5 shall be kept confidential.

8.3 No Public Announcements. None of Buyer, Seller or Seller Parent shall, without the approval of the other parties, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such party shall be so obligated by law, in which case the other parties shall be advised and the parties shall use their reasonable efforts to cause a mutually agreeable release or announcement to be issued.

8.4 Notices. All notices, requests, consents, instructions or other communications or other documents required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally or via facsimile; five (5) days after being sent, when sent by registered or certified mail; or one (1) day after being sent, when sent by overnight courier, addressed as follows:

If to Buyer, to:

NuVasive, Inc.
4545 Towne Centre Court
San Diego, California 92121
Attention: Jason Hannon, Vice President, Legal
Facsimile: (858) 909-2000
8.5 Successors and Assigns

(a) The rights of any party under this Agreement shall not be assignable without the written consent of the other parties, which shall not be unreasonably withheld or delayed; provided, however, that either party may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its assets, or in the event of its merger or consolidation or change in control or similar transaction if (a) the assignee has financial wherewithal equal to or greater than the assignor or (b) the assignment does not relieve the assignor of any of its obligations under this Agreement. In any case, assignee shall execute a counterpart of this Agreement agreeing to be treated as a party to this Agreement; in the case of (b), the counterpart shall acknowledge that it
shall be jointly and severally liable with the assignor and any other assignee of such assignor for all the obligations of the assignor hereunder.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 8.5 any right, remedy or claim under or by reason of this Agreement.

8.6 Access to Records after Closing Date. For a period of five (5) years after the Closing Date, Buyer and its representatives shall have reasonable access to all of the information, books and records of the Medical Device Global Operations which Seller or any of its Affiliates retains after the Closing Date. Such access shall be afforded by Seller and its Affiliates upon receipt of reasonable advance notice and during normal business hours.

8.7 Entire Agreement; Amendments. This Agreement, the Schedules referred to herein, the documents delivered pursuant hereto and the Nondisclosure Agreement contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements or understandings, oral or written, between or among any of the parties hereto. This Agreement shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each of the parties hereto.

8.8 Interpretation. Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

8.9 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

8.10 Expenses. Whether or not the transactions contemplated hereby are consummated, all fees and expenses incurred in connection herewith including, without limitation, all legal, accounting, financial, advisory, consulting and all other fees and expenses of third parties ("Third Party Expenses") incurred by a party in connection with the negotiation and consummation of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses. Seller’s and Seller Parent’s Third Party Expenses shall be deemed “Retained Liabilities” hereunder.

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8.11 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

8.12 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of Seller, Seller Parent and Buyer.

8.13 Further Assurances. From time to time following the Closing Date, Seller shall deliver to Buyer such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may reasonably request or as may be otherwise reasonably necessary to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Purchased Assets.

8.14 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Delaware.

8.15 Dispute Resolution. Any dispute or claim arising out of or in connection with this Agreement will be finally settled by binding arbitration in New York, New York, in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with said rules. The arbitrator shall apply Delaware law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute and shall document his or her decision in writing. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

8.16 No Third-Party Beneficiaries. This Agreement is for the sole benefit of Buyer, Seller and Seller Parent and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than Buyer, Seller and Seller Parent and such permitted successors and assigns, any legal or equitable rights hereunder.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed on the date first above written.

BUYER:
NUVASIVE, INC.

By: /s/ Alexis V. Lukianov
Name: Alexis V. Lukianov
Title: Chairman & CEO

SELLER:
PEARSSALLS LIMITED

By: /s/ Richard C. Adloff
Name: Richard C. Adloff
Title: Sr. V.P., Finance

SELLER PARENT:
AMERICAN MEDICAL INSTRUMENTS HOLDINGS, INC.

By: /s/ Richard C. Adloff
Name: Richard C. Adloff
Title: Sr. V.P., C.F.O

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT
REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "Agreement") is made as of August 4, 2005, by and between NuVasive, Inc., a Delaware corporation (the "Company") and Pearsalls Limited, a private limited company incorporated in England and Wales under registration number 03851227 (the "Stockholder").

The Company has no intention to and shall have no obligation to repurchase any Registrable Securities issued to the Stockholder pursuant to the Purchase Agreement.

The parties hereto agree as follows:

1. Definitions. The following terms as used herein shall have the following meanings:

“Closing Date” shall have the meaning specified in the Purchase Agreement.

“Closing Shares” shall have the meaning specified in the Purchase Agreement.

“Commission” means the Securities and Exchange Commission and any other similar or successor agency of the Federal government then administering the Securities Act or the Exchange Act.

“Common Stock” means the Common Stock, par value $0.001 per share, of the Company.

“Company” shall have the meaning specified in the introductory paragraph of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to the comparable section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

“First Contingent Milestone Payment” shall have the meaning specified in the Purchase Agreement.

“First Milestone Shares” shall mean the shares of Common Stock issued as part of the First Contingent Milestone Payment.

“Measurement Amount” shall mean an amount equal to the product of (i) the number of Closing Shares multiplied by (ii) the Reference Market Value on the date of the issuance of the Closing Shares.
“Measurement Date” shall mean the date that the Company notifies the Stockholder that the Shelf Registration Statement covering the Closing Shares has been declared effective by the Commission and provides the Stockholder with copies of the Prospectus.

“Person” means any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“Prospectus” means the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus.

“Purchase Agreement” means the Asset Purchase Agreement, dated as of August 4, 2005, by and between the Company and the Stockholder.

“Reference Market Value” shall have the meaning specified in the Purchase Agreement.

“Registrable Securities” means (i) all Common Stock owned by the Stockholder and which has been issued, or may in the future be issued, pursuant to the Purchase Agreement, including, but not limited to the Closing Shares, the First Milestone Shares, the Second Milestone Shares and the Third Milestone Shares, and (ii) any shares of Common Stock issued or issuable in respect of the securities described in clause (i) by reason of a stock split, stock dividend or other recapitalization of the Company. For the purposes of this Agreement, Registrable Securities will cease to be Registrable Securities when (i) a registration statement covering such Registrable Securities has been declared effective and they have been disposed of pursuant to such effective registration statement, (ii) they are distributed to the public pursuant to Rule 144 (or any similar provision then in force), or (iii) they have been otherwise sold or transferred by the Stockholder.

“Registration Statement” means any registration statement filed by the Company under the Securities Act that covers any of the Registrable Securities, including the Prospectus, any amendments and supplements to such Registration Statement, including post-effective amendments and all material incorporated by reference in such registration statement.

“Rule 144” means Rule 144 under the Securities Act.

“Second Contingent Milestone Payment” shall have the meaning specified in the Purchase Agreement.

“Second Milestone Shares” shall mean the shares of Common Stock issued as part of the Second Contingent Milestone Payment.
“Securities Act” means the Securities Act of 1933, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to a comparable section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

“Shelf Registration Statement” shall have the meaning specified in Section 2.1.

“Stockholder” shall have the meaning specified in the introductory paragraph of this Agreement.

“Third Contingent Milestone Payment” shall have the meaning specified in the Purchase Agreement.

“Third Milestone Shares” shall mean the shares of Common Stock issued as part of the Third Contingent Milestone Payment.

2. Demand Registrations.

2.1. Demand Registration. The Company shall file as promptly as practicable (but in any event within 30 days after the date of this Agreement) and use its reasonable efforts to have declared effective as promptly as practicable (but in any event, within 120 days after the date of this Agreement) a shelf registration statement pursuant to Rule 415 (or any successor rule thereto) under the Securities Act (the “Shelf Registration Statement”) for a delayed or continuous public offering of the Closing Shares and the First Milestone Shares registering the resale from time to time by the Stockholder thereof, subject to the provisions of Section 2.2 and the other terms and conditions of this Agreement. Such registration statement shall be on Form S-3 (or any successor form to Form S-3) or another appropriate form permitting registration of such Registrable Securities for resale by the Stockholder on a delayed or continuous basis as contemplated by this Section. In the event the registration of a delayed or continuous offering is not permitted under the Securities Act, the Company will provide comparable alternative registration rights under the Securities Act to the Stockholder. In the event that both (i) the Shelf Registration Statement is not effective on the date of the payment of the First Contingent Milestone Payment and (ii) all of the First Milestone Shares are not eligible to be sold within a three month period pursuant to Rule 144 under the Securities Act, the Company shall, notwithstanding the provisions of Section 2.5 of the Purchase Agreement pay the entire amount of the First Contingent Milestone Payment entirely in cash and shall not be permitted to pay any portion thereof in Common Stock.

2.2. Limitations on Shelf Registrations. The Shelf Registration rights granted to the Stockholder pursuant to Section 2.1 are subject to the following limitations:

(a) the Company shall not be obligated under Section 2.1 to file more than one Shelf Registration Statement, provided that a Shelf Registration Statement which does not become or remain effective for the period specified in Section 3.1(a) shall not be deemed to constitute a Shelf Registration Statement filed pursuant to Section 2.1 (unless such Shelf Registration Statement
has not become effective or does not remain effective due solely to the fault of the Stockholder);

(b) the Company shall be entitled to postpone for a reasonable time, not exceeding 10 days, the filing of the Shelf Registration Statement or its efforts to cause the Shelf Registration Statement to become effective if at the time the right to delay is exercised the Company shall determine in good faith that such offering would interfere with any acquisition, financing or other transaction which the Company is actively pursuing and is material to the Company or would involve initial or continuing disclosure obligations that would not be in the best interests of the Company;

(c) the Company by notice to the Stockholder may postpone all sales under the Shelf Registration Statement for a reasonable time, not exceeding 30 days, if the Company shall determine in good faith that permitting such sales would interfere in any material respect with any material acquisition, financing or other transaction which the Company is actively pursuing or require premature disclosure (if the Company is so advised by its legal counsel) of any other material corporate development or event, which disclosure the Company believes would adversely affect the interests of the Company; provided that the Company may not implement more than one such postponement; provided, however, that notwithstanding the foregoing, the Company may postpone all sales under the Shelf Registration Statement at any time beginning on the date on which such registration statement has been effective for an aggregate total of 120 days and ending on the date of the issuance of the First Milestone Shares; and

(d) Notwithstanding the Company’s obligation to register any Registrable Securities hereunder, the Stockholder shall sell, if and to the extent sales may be made pursuant to Rule 144 under the Securities Act, all Registrable Securities pursuant to Rule 144 and not under the Shelf Registration Statement.

2.3. Facilitation of Sale of Registrable Securities. The Company shall use its reasonable efforts to facilitate (as explained below) upon the written request of the Stockholder the private sale by the Stockholder of the Registrable Securities to a third party in the event that the Shelf Registration Statement has not been declared effective within 120 days after the date of this Agreement; provided that the Company shall be entitled to suspend such efforts if and when the Shelf Registration Statement is thereafter declared effective. The Stockholder acknowledges and agrees that the reasonable efforts to facilitate obligations of the Company under this Section will be satisfied by the chief executive officer or the president of the Company giving a “road show” type presentation about the Company to prospective buyers identified by the Stockholder, that the Company shall not be required by this Section to disclose any material inside information in any such presentation and that the obligations of the Company under this Section do not require among other things the Company to make representations and warranties to any buyer of Registrable Securities. The Company and the Stockholder shall cooperate in good faith to schedule the time and place for any above described and requested “road show” presentation.
2.4. **Issuance of Additional Shares.** In the event that on the date of the payment of the Second Contingent Milestone Payment or the Third Contingent Milestone Payment both (i) the shares to be issued upon such payment may not be resold pursuant to an effective Registration Statement and (ii) all of the shares to be issued in respect of such milestone payment are not (a) eligible to be sold within a three month period pursuant to Rule 144 under the Securities Act; or (b) eligible to be sold pursuant to Rule 144(k) under the Securities Act, the Company shall, notwithstanding the provisions of Section 2.5 of the Purchase Agreement pay the entire amount of such milestone payment entirely in cash and shall not be permitted to pay any portion thereof in Common Stock. Furthermore, the Company agrees that in the event that the conditions set forth in both Section 2.4(ii)(a) and (b) are not met on the date of payment of the Second Contingent Milestone Payment or the Third Contingent Milestone Payment, as the case may be, and the Stockholder receives shares of Common Stock in full or partial satisfaction of such payments, all of the terms of Sections 1 through 4, 5, 6 and 8 of this Agreement shall govern the registration of such shares, as if (A) the Shelf Registration Statement had originally been filed and declared effective in respect of such shares of Common Stock, (B) Section 3.1(a)(i) referred to the date on which all of the Second Milestone Shares or Third Milestone Shares, as the case may be, cease to be Registrable Securities, and (C) Section 3.1(a)(ii) referred to the date that is one hundred twenty (120) days after the payment of the Second Contingent Milestone Payment or Third Contingent Milestone Payment, as the case may be.

3. **Registration Procedures.**

3.1. **Preparation and Filing.** The Company will:

   (a) prepare and file with the Commission a Shelf Registration Statement with respect to the Registrable Securities and use its reasonable efforts to cause the Shelf Registration Statement to become and remain effective until the earlier of (i) the date on which all of the Closing Shares and the First Milestone Shares have ceased to be Registrable Securities, (ii) the date that is one hundred twenty (120) days after of the payment of the First Contingent Milestone Payment, or (iii) the date on which all remaining Closing Shares and First Milestone Shares held by Stockholder may be sold pursuant to Rule 144 under the Securities Act within a three month period (such date, the “Shelf Expiration Date”);

   (b) otherwise use its reasonable efforts to comply in all material respects with all applicable rules and regulations of the Commission;

   (c) use its reasonable efforts to cause all the Registrable Securities to be listed on the Nasdaq National Market, if the Registrable Securities are not so already listed, or such other market as mutually agreed upon by the Company and the Stockholder in writing;

   (d) take such reasonable actions as the Stockholder shall request in order to expedite or facilitate the disposition of the Registrable...
Securities, subject to the terms and conditions of this Agreement; provided, that, such reasonable actions can be performed without significant time or expense on the part of the Company;

(e) permit the Stockholder to participate in the preparation of the Shelf Registration Statement (provided that the Stockholder does not unreasonably delay the preparation thereof) and to require the insertion therein of material furnished to the Company in writing which in the judgment of the Stockholder should be included and which is reasonably acceptable to the Company;

(f) use such reasonable efforts to prevent the issuance of any stop order suspending the effectiveness of the Shelf Registration Statement or of any order preventing or suspending the use of any preliminary prospectus and, if any such order is issued, to obtain the lifting thereof at the earliest reasonable time;

(g) not at any time file or make any amendment to the Shelf Registration Statement, or any amendment of or supplement to the Prospectus (excluding the documents incorporated by reference into the Prospectus), of which the Stockholder shall not have previously been advised or furnished a copy or to which the Stockholder, or counsel for the Stockholder, shall reasonably object;

(h) furnish to the Stockholder without charge as many signed copies of the Shelf Registration Statement (as originally filed) and of all amendments thereto, whether filed before or after the Shelf Registration Statement becomes effective, copies of all exhibits and documents filed therewith, including documents incorporated by reference into the Prospectus, and signed copies of all consents and certificates of experts, as the Stockholder may reasonably request;

(i) will deliver to the Stockholder, without charge, from time to time during the period when the Prospectus is required to be delivered under the Securities Act, such number of copies of the Prospectus (as supplemented or amended) as the Stockholder may reasonably request; and

(j) use reasonable efforts to comply in all material respects with the Securities Act and the rules and regulations of the Commission thereunder, and the Exchange Act and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Registrable Securities in accordance with the intended method or methods of distribution contemplated in the Prospectus and permitted by this Agreement. If at any time when a prospectus is required by the Securities Act to be delivered in connection with sales of the Registrable Securities any event shall occur or condition exist as a result of which it is necessary or desirable, based on the advice of counsel for the Stockholder or agents or counsel for the Company, to
amend the Shelf Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary or desirable, based on the advice of such counsel, at any such time to amend the Shelf Registration Statement or amend or supplement such Prospectus of the Company, the Company will promptly prepare and file with the Commission such amendment or supplement as may be necessary to correct such untrue statement or omission or to make the Shelf Registration Statement or the Prospectus comply with such requirements.

3.2. **Amendments.** In connection with the Shelf Registration Statement filed pursuant to this Agreement, the Company shall file any post-effective amendment or amendments to the Shelf Registration Statement which may be required under the Securities Act during the period required to effect the distribution contemplated thereby.

3.3. **Notification of Certain Events.**

(a) During the period for which the Company is required to file and keep effective the Shelf Registration Statement pursuant to this Agreement, the Company shall promptly notify the Stockholder during the period the Shelf Registration Statement is required to remain effective, or at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event or the existence of any fact, as a result of which the Shelf Registration Statement or such Prospectus contained in the Shelf Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of circumstances then existing. The Stockholder agrees, upon receipt of such notice, forthwith to cease making offers and sales of such securities pursuant to the Shelf Registration Statement or deliveries of the Prospectus contained therein for any purpose and to return to the Company the copies of such Prospectus not theretofore delivered by the Stockholder. Subject to Section 3.2, the Company shall prepare and furnish to the Stockholder a reasonable number of copies of any supplement to or amendment of such Prospectus that may be necessary so that, as thereafter delivered to the purchaser of the Registrable Securities, such Prospectus shall not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make these statements therein not misleading in the light of circumstances then existing.

(b) The Company will promptly notify the Stockholder and confirm the notice in writing, (i) when the Shelf Registration Statement, or any post-effective amendment to the Shelf Registration Statement, shall have become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of any request by the Commission to amend the Shelf Registration Statement or amend or supplement the Prospectus or for additional information relating specifically to the Shelf Registrations Statement or
Prospectus and (iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or of the institution or threatening of any proceedings for any of such purposes.

3.4. **Provision of Information.** As a condition to the obligation of the Company under Section 2 to cause the Shelf Registration Statement or an amendment to be filed or shares to be included in the Shelf Registration Statement, the Stockholder shall provide such information and execute such documents, powers of attorney and questionnaires as may reasonably be required by the Company in connection with such registration.

3.5. **Reports.** The Company covenants that it will use reasonable efforts to file the reports required to be filed by it under the Securities Act and the rules and regulations of the Commission thereunder and it will take such further action as the Stockholder may reasonably request, all to the extent required from time to time to enable the Stockholder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

3.6. **State Securities Laws.** In connection with the offering of any securities registered pursuant to this Agreement, the Company shall use its reasonable efforts to qualify or register the securities to be sold under the securities or “blue sky” laws of such jurisdictions as may be reasonably requested by the Stockholder or any other acts and things which may be necessary or advisable to enable the Stockholder to consummate the disposition in such jurisdiction of such securities; provided, however, that the Company shall not be obligated to qualify as a foreign corporation to do business under the laws of any such jurisdiction in which it is not then qualified or to file any general consent to service of process.

4. **Holdback Arrangements.**

The Company shall have the right to require that the Stockholder shall not effect any public sale or distribution (including sales pursuant to the Shelf Registration Statement or pursuant to Rule 144) of Common Stock during the ten business days prior to, and the 60-day period beginning on, the effective date of the registration under the Securities Act of any underwritten offering of Common Stock for cash by the Company (or such an offering by the Company and stockholders of the Company), if the managing underwriter(s) for the public offering so request. The Company shall be entitled to exercise its rights under this Section not more than twice during any calendar year.

5. **Registration Expenses.**

   (a) The Company will pay and bear all costs and expenses incident to the performance of its obligations under this Agreement with respect to the registration pursuant to Section 2, including:
the preparation, printing and filing of the Shelf Registration Statement (including financial statements and exhibits) as originally filed and as amended, any preliminary prospectuses and the Prospectus and any amendments or supplements thereto, and the cost of furnishing copies thereof to the Stockholder;

(ii) the preparation and printing of certificates representing the Registrable Securities, any blue sky survey and other documents relating to the performance of and compliance by the Company with this Agreement;

(iii) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or other trading market, if the Registrable Securities are not already so registered.

(b) The Stockholder will pay and bear all costs and expenses incident to the delivery of the Registrable Securities to be sold by it, including any stock transfer taxes payable upon the sale of such Registrable Securities and any underwriter discounts or commissions, broker or dealer fees or costs and any similar costs and expenses in connection therewith. The Stockholder will also bear the costs and expenses of its own counsel and other agents retained in connection with the Shelf Registration Statement.

6. **Indemnification.**

6.1. **Indemnification by the Company.** In connection with any registration of securities pursuant to this Agreement, to the extent permitted by law, the Company shall indemnify and hold harmless the Stockholder and each officer, director and agent of the Stockholder and each Person, if any, who controls the Stockholder (within the meaning of the Securities Act or the Exchange Act) (such holder and any such other Person being hereinafter an “Indemnitee”) (i) against any and all losses, claims, damages and expenses whatsoever to which such Indemnitee may become subject, to the extent such losses, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Shelf Registration Statement, Prospectus or any amendment or supplement to any of the foregoing, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) against any and all losses, claims, damages and expenses whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, if such settlement is effected with the written consent of the Company; and (iii) against any and all expense whatsoever (including reasonable fees and disbursements of counsel), as reasonably incurred in investigating, preparing for or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above; provided,
however, that the Company shall not be required to indemnify and hold harmless or reimburse an Indemnitee to the extent that any such loss, claim, damage or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission in any document made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Indemnitee expressly for use in the preparation of such documents; provided further that the Company shall not be required to indemnify any Indemnitese, to the extent that the loss, claim, damage, liability (or actions in respect thereof) or expense for which indemnification is claimed results from the failure by such Indemnitee to send or give a copy of the then current Prospectus (if theretofore made available to the Stockholder) or a prospectus supplement to the Person asserting an untrue statement or alleged untrue statement or omission or alleged omission if such statement or omission was corrected in the then current Prospectus or in the prospectus supplement; provided further that the Company shall not be required to indemnify any Indemnitese to the extent that the loss, claim, damage, liability (or actions in respect thereof) or expense for which indemnification is claimed arises with respect to a sale or transfer of Common Stock made during a period during which the sale or transfer thereof is not permitted under this Agreement.

6.2. Indemnification by the Stockholder. In connection with the Shelf Registration Statement, the Stockholder will furnish to the Company in writing such information as shall be reasonably requested by the Company for use in the Shelf Registration Statement or prospectus and shall, to the extent permitted by law, indemnify and hold harmless the Company, its directors, officers and agents and each Person, if any, who controls the Company (within the meaning of the Securities Act or the Exchange Act) (the Company and any such other Person being hereinafter a “Company Indemnitee”) against all losses, claims, damages or liabilities to which any such Company Indemnitee may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue or alleged untrue statement of any material fact contained in the Shelf Registration Statement, prospectus or any preliminary prospectus or any amendment or supplement to any of the foregoing, or arise out of or are based upon the omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case, to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Stockholder expressly for use in the preparation of such documents; and, subject to Section 6.3, the Stockholder shall reimburse the Company Indemnitee for any and all expenses whatsoever (including reasonable fees and disbursements of counsel chosen by the Company), reasonably incurred by the Company Indemnitee in connection with investigating, preparing for or defending against any such loss, claim, damage, liability or action; provided, however, that the maximum amount of liability of the Stockholder under this Section shall be limited to an amount equal to the net proceeds actually received by the Stockholder from the sale of securities effected pursuant to such registration.
6.3. **Indemnification Procedures.** Promptly after receipt by an indemnified party under Section 6.1 or Section 6.2 of notice of the commencement of any action, suit, proceeding or investigation or threat thereof made in writing for which such Person will claim indemnification or contribution pursuant to this Agreement, the indemnified party shall notify the indemnifying party thereof in writing and, unless in such indemnified party’s reasonable judgment a conflict of interest may exist between such indemnified and indemnifying parties with respect to such claim, shall permit such indemnifying party to assume and control the defense of such claim at its expense with counsel reasonably satisfactory to such indemnified party. The failure to so notify the indemnifying party shall relieve the indemnifying party from any liability hereunder with respect to the action if such failure prevents the indemnifying party from contesting such action; provided, however that any such failure shall not relieve the indemnifying party from any other liability which it may have to any other party. If the indemnifying party gives notice to such indemnified party of its election to assume and control the defense of such claim, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense or investigation of the action unless the indemnified party shall have given the indemnifying party notice of a conflict of interest with respect to such claim. The failure of an indemnifying party to give notice to the indemnified party of its election to assume and control the defense of any action for which notice has been received by the indemnifying party in accordance with this Section within 45 days after the receipt of such notice shall constitute an election by the indemnifying party not to assume and control the defense of such action. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other indemnified party with respect to such claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of separate counsel for such indemnified parties. No indemnified party shall consent to entry of any judgment or enter into any settlement with respect to a claim without the consent of the indemnifying party.

6.4. **Rights of Contribution.** In order to provide for just and equitable contribution in circumstances under which the indemnity contemplated by Section 6.1 and Section 6.2 is for any reason not available, other than by reason of the exceptions provided therein, the parties required to indemnify by the terms thereof shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by such indemnity agreement incurred by the Company and the Stockholder, except to the extent that contribution is not permitted under Section 11(f) of the Securities Act. In determining the amounts which the respective parties shall contribute, there shall be considered the relative benefits received by each party from the offering of the Registrable Securities (taking into account the portion of the proceeds of the offering realized by each), the relative knowledge of the parties and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission and any other equitable considerations appropriate under the circumstances. The Company and the Stockholder agree with each other that the Stockholder shall not be required to contribute any amount in excess of the amount the
Stockholder would have been required to pay to an indemnified party if the indemnity under Section 6.2 were available. For purposes of this Section, each director and each officer of the Company who signed the Shelf Registration Statement, and each Person, if any, who controls the Company or the Stockholder within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as the Company or the Stockholder, as the case may be.

7. **Differential Payments.**

7.1. **Differential Payment.** As of the Measurement Date, the Stockholder shall calculate the amount equal to \((X)\) the last sale price of a share of Common Stock traded on the Nasdaq National Market on the trading day immediately preceding the Measurement Date, multiplied by \((Y)\) the number Closing Shares issued to Stockholder (such amount, the “Proceeds”). Stockholder shall notify the Company of the amount of the Proceeds not later than the fifth business day following the Measurement Date. If the Proceeds exceeds $7,700,000.00, then the Stockholder shall pay to the Company not later than the fifteenth business day following the Measurement Date an amount in cash by wire transfer, or delivery of other immediately available funds, equal to the excess of the Proceeds over $7,700,000.00. If the Proceeds are not equal to at least $6,300,000, then the Company shall pay to the Stockholder not later than the fifteenth business day following the Measurement Date an amount in cash by wire transfer, or delivery of other immediately available funds, equal to the amount by which the Proceeds are less than $6,300,000.00. If the Proceeds are at least $6,300,000.00 but not greater than $7,700,000.00, no differential payment in respect of the Proceeds shall be payable by either the Stockholder or the Company.

7.2. **No Interest or Transfer.** No interest shall be paid with respect to any amount due and timely paid pursuant to this Section 7. The right of the Stockholder and the Company to any payment under this Section 7 shall not be sold, assigned, pledged, gifted, conveyed, transferred or otherwise disposed of (a “Transfer”) by either the Company or the Stockholder. Any Transfer in violation of this subsection 7.5 shall be null and void.

8. **Miscellaneous.**

8.1. **Mergers and Other Transactions.** The Company agrees that, as a condition to any merger, consolidation or the sale of all or substantially all of its assets in exchange for securities of another entity, it will cause all future payments owed to Stockholder pursuant to the Purchase Agreement to be made in cash.

8.2. **Assignment.** The registration rights contained in Section 2 of this Agreement shall not be transferable by the Stockholder. The rights of any party under this Agreement shall not be assignable without the written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that either party may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or in the event of a merger or consolidation or change in control or similar transaction.
8.3. **Limitation of Registration Rights.** Nothing contained in this Agreement shall create any obligation on behalf of the Company to register under the Securities Act any securities which are not Registrable Securities held by the Stockholder or issuable to the Stockholder pursuant to the Purchase Agreement.

8.4. **No Inconsistent Agreements.** The Company has not entered into, and will not hereafter enter into, any agreement with respect to its securities which is inconsistent with the rights granted to the Stockholder in this Agreement.

8.5. **Remedies.** The Stockholder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

8.6. **Arbitration; Dispute Resolution.** Any dispute or claim arising out of or in connection with this Agreement will be finally settled by binding arbitration in New York, New York, in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with said rules. The arbitrator shall apply Delaware law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

8.7. **Notices.** All notices, requests, consents, instructions or other communications or other documents required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally, via facsimile or five (5) days after being sent, when sent by registered or certified mail, or one (1) day after being sent, when sent by overnight courier, addressed as follows:

If to the Company:

NuVasive, Inc.
4545 Towne Center Court
San Diego, California 92121
Attention: Jason Hannon, Vice President, Legal
Facsimile: (858) 909-2000

with a copy (which shall not constitute notice) to:

Heller Ehrman LLP
4350 LaJolla Village Drive, 7th Floor
San Diego, California 92122
Attention: Michael S. Kagnoff, Esq.
Facsimile: (858) 450-8499

If to the Stockholder:

Pearsalls Limited
Tancred Street
Taunton, Somerset, TA1 1RY
Attention:  D. Lawson Lyon
Facsimile:  011-44-1823-336-824

with a copy (which shall not constitute notice) to:

Gardner, Carton & Douglas
191 North Wacker Drive, Suite 3700
Chicago, Illinois  60606
Attention:  David L. Wolfe
Facsimile:  (312) 569-3313

or to such other address as such party may indicate by a notice delivered to the other parties hereto.

8.8.  **Countersparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. A facsimile copy of this Agreement and any signatures hereon shall be considered as originals for all purposes.

8.9.  **Headings.** Section headings are inserted herein for convenience only and do not form a part of this Agreement.

8.10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

8.11. **Severability.** In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the Stockholder shall be enforceable to the fullest extent permitted by law.

8.12. **Entire Agreement; Amendment.** This agreement contains the entire agreement among the parties hereto with respect to the transactions contemplated herein, and supersedes all prior written agreements and negotiations and oral understandings, if any, with respect to its subject matter. This Agreement may not be amended, supplemented or discharged except by an instrument in writing signed by the Company and the Stockholder.
8.13 Limitation of Liability. EXCEPT FOR ANY LIABILITY PURSUANT TO SECTION 6 OF THIS AGREEMENT, DAMAGES FOR ANY BREACH OF THIS AGREEMENT BY THE COMPANY SHALL BE LIMITED TO A MAXIMUM OF, WITH RESPECT TO EACH SHARE OF COMMON STOCK ISSUED TO STOCKHOLDER PURSUANT TO THE PURCHASE AGREEMENT, THE DIFFERENCE BETWEEN THE REFERENCE MARKET VALUE OF SUCH SHARE ON THE DATE OF ISSUANCE AND THE ACTUAL PRICE AT WHICH SUCH SHARE IS ULTIMATELY SOLD.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

NUVASIVE, INC.

By: /s/ Alexis V. Lukianov
Its: Chairman & CEO

PEARSALLS LIMITED

By: /s/ Richard C. Adloff
Its: Sr. V.P., Finance

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

15
EXCLUSIVE MANUFACTURING AGREEMENT

This EXCLUSIVE MANUFACTURING AGREEMENT (this "Agreement"), dated as of August 4, 2005 (the "Effective Date"), is entered into between NuVasive, Inc., a Delaware corporation, with its principal place of business at 4545 Towne Centre Court, San Diego, 92121 ("NuVasive"), and Pearsalls Limited, a company incorporated in England & Wales under registration number 03851227 whose registered office is at Tancred Street, Taunton, Somerset, TA1 1RY ("Pearsalls").

RECITALS

WHEREAS, pursuant to a separate asset purchase agreement (the "Asset Purchase Agreement") entered into by and between the parties concurrently with this Agreement, NuVasive has purchased from Pearsalls the assets for a business that involves the ownership, design, development and commercial exploitation of non-vascular applications of embroidery technology for surgical implants, including, without limitation, products referred to by Seller by the name “NeoDisc™” and related spine motion preserving technologies, test methods and know-how (collectively, the “Medical Device Global Operations”);

WHEREAS, pursuant to the Asset Purchase Agreement, Pearsalls transferred to NuVasive certain patent rights, copyrights and rights to technical information for the design, development, and manufacture of certain products, including the NeoDisc™ artificial cervical disc product more fully described in Exhibit A-I (the “Cervical Spine Product”) and the Nottingham Rotator Cuff product more fully described in Exhibit A-II (the “Nottingham Rotator Cuff Product”), and its rights to the NeoDisc trademark;

WHEREAS, pursuant to the Asset Purchase Agreement, Pearsalls also assigned to NuVasive certain rights under a Patent and Know-How License (the assigned rights being referred to herein as the “Ellis License”) from Ellis Developments Limited ("EDL") wherein EDL licensed to Pearsalls certain patent rights, copyrights, and rights to technical information for the manufacture of human surgical implants using embroidery technology;

WHEREAS, NuVasive desires Pearsalls to manufacture, assemble and supply the Cervical Spine Product for purchase by NuVasive and Pearsalls desires to manufacture, assemble and supply the Cervical Spine Product for sale to NuVasive, all on an exclusive basis as further set forth herein; and

WHEREAS, during the term hereof, NuVasive desires Pearsalls to manufacture, assemble and supply Nottingham Rotator Cuff Products on a non-exclusive basis and may desire Pearsalls to manufacture, assemble and supply on a non-exclusive basis certain other human surgical implants (other than the Cervical Spine Product and the Nottingham Rotator Cuff Product) that are created in whole or in part using embroidery technology, (the “Other Products” and collectively with the Cervical Spine Product and the Nottingham Rotator Cuff Product, the
“Products”) for purchase by NuVasive and, subject to the mutual agreement of the parties on the Terms of Sale (as defined herein) for such Other Products, Pearsalls desires to manufacture, assemble and supply such Other Products for sale to NuVasive on the terms set forth herein;

WHEREAS, Pearsalls requires a license to certain NuVasive intellectual property rights and a sublicense under the Ellis License in order to manufacture Products for NuVasive and perform related services under this Agreement and NuVasive desires to grant Pearsalls such a license together with a sublicense under the Ellis Licence for such limited purposes.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, the parties hereby agree as follows:

1. DEFINITIONS

All definitions below or elsewhere in this Agreement apply to both their singular and plural forms, as the context may require. The terms “herein,” “hereunder,” “hereof” and similar expressions refer to this Agreement. “Section” refers to a Section herein. “Exhibit” refers to an exhibit attached hereto. The word “including” means “including without limitation,” unless otherwise stated. All references to “days” are to calendar days, unless otherwise specified.

For purposes of this Agreement, the terms defined in this Section 1 shall have the respective meanings set forth below:

1.1 “Affiliate” means, as to any Person, any other Person which is controlling, controlled by or under common control with such Person.

1.2 “Alternative Manufacturing License” has the meaning set forth in Section 5.2.

1.3 “Applicable Law” means all laws, ordinances, rules and regulations applicable to the manufacture of a Product or any other activities of a party under this Agreement, including the applicable regulations and guidelines of any Regulatory Authority including the FDA and foreign counterparts and all applicable cGMPs, in effect from time to time during the Term.

1.4 “Background License” has the meaning set forth in Section 7.2.

1.5 “Base Cost” means for each of the Cervical Spine Product and the Nottingham Rotator Cuff Product the Base Cost specified for such Product in Exhibit C and for each Other Product means an amount consistent with the Base Cost Formula or as otherwise agreed by the parties, in each case as such Base Cost may be adjusted by the parties from time to time as provided hereunder.

1.6 “Base Cost Formula” means the Base Cost formula set forth in Section 3 of Exhibit C.

1.7 “cGMP” or “current Good Manufacturing Practices” means current good manufacturing practices applicable from time to time to the manufacturing, packaging, labeling, holding and quality control testing of a Product, including Good Manufacturing Practices.

1.8 “Cervical Spine Product Packaging Specifications” means the Packaging Specifications set forth in Exhibit B-III attached hereto, as such specifications may be revised by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.9 “Cervical Spine Product” means the product described in Exhibit A-I attached hereto.

1.10 “Cervical Spine Product Specifications” means the Product Specifications set forth in Exhibit B-I attached hereto, as such Product Specifications may be revised by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.11 “Change of Control” means a party’s (i) sale, lease, or other disposition of all or substantially all of its assets, rights or businesses, or (ii) the acquisition of a party by, or merger, consolidation, reorganization, business combination of a party into or with, another entity in which the stockholders of a party immediately prior to such acquisition, merger, consolidation, reorganization or business combination do not own a majority of the outstanding voting shares of the surviving, purchasing, or newly resulting business entity.

1.12 “FDA” means the United States Food and Drug Administration.

1.13 “Inventions” means all inventions, discoveries, improvements or other technology conceived or reduced to practice during the Term solely by Pearsalls or jointly by its employees or others acting on behalf of Pearsalls and NuVasive or their Affiliates to the extent relating to the Product, the Manufacturing Know-How, the Medical Device Intellectual Property, or any improvements thereto, and all Intellectual Property Rights in the foregoing.

1.14 “Intellectual Property” or “Intellectual Property Rights” means all intellectual and industrial property rights, including any and all patents (including reissues, divisions, continuations and extensions thereof), patent registrations, database rights, utility models, business processes, trademarks, trade secrets, know how, trade names, copyrights, moral rights, any other form of proprietary protection, and any applications for any of the foregoing, which arises or is enforceable under the laws of the United States, any other jurisdiction, or any bi-lateral or multi-lateral treaty regime.

1.15 “Manufacturing Know-How” means all information, techniques, practices, methods, knowledge, skill and data, which are not generally known including, but not limited to, a proprietary “trade secret” or other Intellectual Property Rights, whether or not patentable or copyrightable, relating to or useful for the production, assembly, manufacture, storage and/or transport of the Product, including any of the foregoing that is part of the Medical Device Intellectual Property.
1.16 **Material Change** means a change requested or required by NuVasive, or requested by Pearsalls and accepted in writing by NuVasive, that does or is likely to materially increase the work, time or cost of manufacturing, packaging, storing or shipping the Product, or to result in any other type of additional burden on Pearsalls.

1.17 **Medical Device Intellectual Property** means all of the Intellectual Property included in the Purchased Assets, as such term is defined in the Asset Purchase Agreement, purchased by NuVasive from Pearsalls under the terms of the Asset Purchase Agreement.

1.18 **Nottingham Rotator Cuff Product Packaging Specifications** means the Packaging Specifications set forth in Exhibit B-III attached hereto, as such specifications may be revised by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.19 **Nottingham Rotator Cuff Product** means the product described in Exhibit A-II attached hereto.

1.20 **Nottingham Rotator Cuff Product Specifications** means the Product Specifications set forth in Exhibit B-II attached hereto, as such Product Specifications may be revised by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.21 **NuVasive Technology** means (i) the Medical Device Intellectual Property, and (ii) all other technologies, inventions, materials, and documents, and all Intellectual Property rights in the foregoing, owned by NuVasive or its Affiliates (with the right to grant sublicenses thereto) at any time during the Term (but only during the period of such ownership) that relate to the manufacture or assembly of the Products.

1.22 **Packaging Specifications** means the requirements, standards, quality control testing and other attributes pertaining to the packaging, labeling and shipping of a Product, as such specifications may be amended by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.23 **Pearsalls Technology** means all technologies, inventions, materials, and documents, and all Intellectual Property rights in the foregoing, owned by Pearsalls or its Affiliates during the Term (but only during the period of such ownership) that relate to the manufacture or assembly of the Product.

1.24 **Person** means any individual, corporation, partnership, trust, limited liability company, association, joint stock company, joint venture, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

1.25 **Pricing Formula** means the pricing formula set forth in Section 3 of Exhibit C.

1.26 **Product** means the Cervical Spine Product, the Nottingham Rotator Cuff Product and any Other Product that the parties agree will be manufactured by Pearsalls for sale to NuVasive under the terms of this Agreement.
1.27 “Product Category” means one or a group of distinguishing characteristics of a particular Product that require differentiation on the package label for the Product and includes the intended country of distribution for such Product Category and the Product’s size and intended use (i.e., whether for use clinically or for demonstration or testing purposes), as well as any other categories agreed upon by the parties from time to time.

1.28 “Product Specifications” means the requirements, standards, quality control testing and other attributes pertaining to a Product, as such specifications may be amended by NuVasive pursuant to the Change Control process set forth in Section 3.1.

1.29 “Quality Agreement” means the quality agreement for volume manufacture of the Cervical Spine Product that will be developed by the parties mutually in good faith and agreed upon by both parties in writing prior to the commercial sale of the Cervical Spine Product in the United States and attached hereto as Exhibit E.

1.30 “Quality Standards” means initial and continuing compliance with: ISO 9001 or ISO 13485, as applicable; all local laws and regulations affecting manufacturing; and internal identified manufacturing policies, standard operating procedures and specifications; as any of the foregoing are in effect from time to time; and no failure to comply with directions or regulations of Regulatory Authorities for jurisdictions in which any Product is distributed for human use, and, with respect to any Product intended for human use in the United States, Quality Standards shall include cGMP and applicable FDA rules and regulations and International Conference on Harmonization guidelines and requirements.

1.31 “Regulatory Authority” means any governmental regulatory authority within the Territory involved in regulating any aspect of the manufacture, market approval, sale, distribution, packaging or use of any Product for each jurisdiction in which such Product is distributed.

1.32 “Term” has the meaning set forth in Section 12.1.

1.33 “Terms of Sale” means for each Product the pricing and all other Product-specific terms of sale for the sale of such Product by Pearsalls to NuVasive, as agreed to by the parties.

1.34 “Territory” shall mean the world.

2. SPECIFICATIONS; REGULATORY ASSISTANCE

2.1 Specifications. The initial Cervical Spine Product Specifications are attached hereto as Exhibit B-I and the initial Cervical Spine Product Packaging Specifications are attached hereto as Exhibit B-III. The initial Nottingham Rotator Cuff Product Specifications are attached hereto as Exhibit B-II and the initial Nottingham Rotator Cuff Product Packaging Specifications are attached hereto as Exhibit B-III. The initial Product and Packaging Specifications for each Other Product shall be specified by NuVasive in consultation with Pearsalls a reasonable period of time prior to the initial order for such Product, but in any event at least thirty (30) days prior to such order, and,
to the extent such specifications would require material changes in Pearsalls’ facilities, manufacturing methods or personnel, shall be subject to
Pearsalls’ consent, which shall not be unreasonably withheld. Both Pearsalls and NuVasive acknowledge and understand that Product and
Packaging Specifications for a Product may need to be modified from time to time in light of regulatory requirements or other reasons. Any such
modifications that are required due to generally applicable regulatory requirements will be implemented by Pearsalls as quickly as commercially
reasonable and at Pearsalls’ expense; provided that, changes specific to a particular Product that may be required by a Regulatory Authority for the
manufacture, assembly, distribution or use of such Product shall be implemented pursuant to the Change Control process set forth in Section 3.1.
Any such modifications that are required or desired for reasons other than generally applicable regulatory requirements may result in changes to the
Terms of Sale for such Product, and subject to the parties’ agreement to such changes, shall be implemented by Pearsalls as quickly as commercially
reasonable. Subject to the foregoing, all modifications to Product and Packaging Specifications shall be implemented pursuant to the Change
Control process set forth in Section 3.1. In the event that a change in regulatory requirements for a particular jurisdiction would make unlawful the
sale or use in such jurisdiction of a Product not manufactured in compliance therewith, Pearsalls shall cease manufacture of such Product for such
jurisdiction until in compliance with such changed regulatory requirements.

2.2 Document Transfer. Pearsalls shall supply to NuVasive and advise NuVasive in writing within ten (10) days of all material final changes
(i.e., not in draft form) to the items specified in Sections 2.2.1 and 2.2.2:

2.2.1 all plans, drawings and all other documents associated with the manufacture of Products under this Agreement, as such documents
are created by or on behalf of Pearsalls and become available; and

2.2.2 a list of all suppliers and other contributors, with full contact information, that supply raw materials, compositions thereof,
fabricated products, technical designs or information (including know-how) and all other inputs used in the manufacture of Products.

2.3 Regulatory Assistance. Pearsalls shall cooperate, as reasonably requested by NuVasive, to assist NuVasive in obtaining all necessary
regulatory approvals for the manufacture and sale of the Products. Pearsalls shall bear the cost of such cooperation to the extent related to the
provision of manufacturing information, and NuVasive shall bear the reasonable out of pocket cost of all other such cooperation by Pearsalls;
provided that, Pearsalls shall not be required to spend more than 200 man-hours per year on any of such efforts without reasonable compensation by
NuVasive for all time spent in assisting NuVasive in excess of such yearly limit.

3. CHANGE CONTROL

3.1 Changes to Product and Packaging Specifications. NuVasive may make changes to the Product and Packaging Specifications that are not
Material Changes at any time.
upon written notice to Pearsalls, and Pearsalls shall implement such changes promptly after receipt of such notice from NuVasive. Notwithstanding any provision herein to the contrary, to be effective, notice of a change requested by NuVasive must contain a complete description of such change that is sufficiently detailed to enable Pearsalls to assess the nature and scope of the modifications required to implement such change. If the notice of a requested change does not contain sufficient information to enable Pearsalls to assess the potential impact of such change, Pearsalls shall notify NuVasive and the parties shall work together in good faith to develop or acquire the necessary information. Promptly after receipt of notice of a requested change and the information necessary to assess its potential impact, Pearsalls shall notify NuVasive whether or not the requested change would be a Material Change. With respect to a Material Change, the parties will work together in good faith to agree upon (a) a cost-effective method to implement the requested change, and (b) appropriate changes to the Terms of Sale for the Product, including changes to the pricing consistent with the Pricing Formula. Finally, the parties will develop a “Change Order” that includes a detailed and complete description of the change to be implemented and specifies all changes to the Terms of Sale for the Product. Material Changes will be implemented after execution of a Change Order, in accordance with the terms of such Change Order. In the event Pearsalls desires to suggest a change to the Product and Packaging Specifications, if it is not a Material Change, Pearsalls shall notify NuVasive accordingly and implement such change once it has received NuVasive’s written consent for the change. If it is a Material Change, Pearsalls shall notify NuVasive and provide a Change Order for such change and the change will be implemented only after both parties have executed the Change Order.

3.2 Change to Non-Pricing Terms of Sale based on Material Change Experienced by Pearsalls. In the event of any Material Change experienced by Pearsalls or reasonably anticipated by Pearsalls that, in the reasonable opinion of Pearsalls, would affect the commercial reasonableness of any of the Terms of Sale, other than price, for one or more Products, Pearsalls shall notify NuVasive of the Material Change and the required changes to the Terms of Sale for each affected Product. The description of the Material Change submitted by Pearsalls to NuVasive shall be sufficiently detailed to enable NuVasive to assess the changes necessary to ensure the commercial reasonableness of the Terms of Sale for each Product impacted by such change. The parties will work together in good faith to agree upon modifications to the non-pricing Terms of Sale for the Product and/or the Product or Packaging Specifications and other factors that impact the supply of the Product. The parties will develop a Change Order that includes a detailed and complete description of the changes to be implemented and specifies all changes to the Terms of Sale for each affected Product. For the avoidance of doubt, the parties agree that changes to pricing shall be made only in accordance with Section 8.1.2, or otherwise as mutually agreed by the parties.

3.3 Implementation of Change Orders. Once a Change Order has been executed by both parties, Pearsalls shall perform the work specified in the Change Order in accordance with its terms and any revisions to the Terms of Sale shall be effective immediately or as otherwise specified in the Change Order. Each Change Order executed by Pearsalls and NuVasive will be incorporated into and constitute an amendment to this Agreement. Unless otherwise specified in the applicable Change Order, the terms of any
Change Order will take precedence over any inconsistent provisions set forth in this Agreement, but only with respect to the Products that are the subject of the Change Order.

4. MANUFACTURE AND SUPPLY

4.1 Requirements; Manufacture of Products. During the Term and subject to the terms and conditions set forth herein, (a) Pearsalls shall manufacture and supply all of NuVasive’s requirements of Cervical Spine Products in the Territory, including Cervical Spine Products for clinical studies, demonstration/sample purposes and commercial sale, and (b) except as otherwise provided herein, NuVasive shall purchase all of its requirement for Cervical Spine Products in the Territory exclusively from Pearsalls, including Cervical Spine Products for clinical studies, demonstration/sample purposes and commercial sale. Further, Pearsalls shall manufacture and supply the Nottingham Rotator Cuff Product for NuVasive for the price specified in Exhibit C, in accordance with appropriate other Terms of Sale agreed by the parties and subject to the terms hereof; provided, however, that such supply shall be on a non-exclusive basis. For the avoidance of doubt, NuVasive shall have the right in its sole discretion and at all times to manufacture, and to use third parties to manufacture and supply all or part of NuVasive’s requirements for the Nottingham Rotator Cuff Product and Other Products.

4.2 Forecasts. Upon commencement of clinical studies for the Cervical Spine Product or within a commercially reasonable period prior to the first order for Products, at least thirty (30) days prior to the commencement of each calendar quarter NuVasive shall furnish Pearsalls with a good faith estimate of the quantities of each Product Category that NuVasive intends to purchase from Pearsalls during each month of the upcoming four (4) calendar quarters (the “Forecast”). Notwithstanding the foregoing, NuVasive shall notify Pearsalls of any revision to a Forecast already furnished to Pearsalls as soon as commercially practicable after NuVasive becomes aware that its likely or actual requirements for one or more Product Categories have changed by *** percent (***%) or more. It is understood that the quantities specified in the Forecasts are intended to be estimates only and shall not be binding on NuVasive; provided however, that Pearsalls shall not have any obligation to be prepared to supply NuVasive with more than *** percent (***%) of NuVasive’s forecasted requirement for any particular Product Category for any particular month, as specified in the most recent Forecast for such month.

4.3 Orders. NuVasive shall make all purchases by submitting monthly purchase orders to Pearsalls which shall be firm and binding and NuVasive shall use commercially reasonable efforts to ensure that all of its requirements for Products in the month to which each such purchase order relates are specified in such purchase order. Notwithstanding the foregoing, NuVasive may also submit additional firm and binding purchase orders in any month. Each purchase order shall specify the quantity of each Product Category

*** Material has been omitted pursuant to a request for confidential treatment.
ordered, including, without limitation whether and how many are ordered for demonstration/sample or clinical study purposes.

4.3.1 To the extent the quantity of Products ordered is consistent with the applicable Forecast, Pearsalls shall deliver the ordered Products within thirty (30) days after the receipt of the corresponding purchase order. Pearsalls shall notify NuVasive within five (5) days after receipt of a purchase order for a quantity that exceeds the quantity in the applicable Forecast if Pearsalls is unable to timely produce such excess quantity, and the parties will work together in good faith to enable Pearsalls to meet the terms of the order as closely as possible.

4.3.2 Pearsalls shall use commercially reasonable efforts to fill NuVasive’s purchase orders for Products in any given month in excess of the quantities for that month specified in the applicable Forecast; provided, however, that Pearsalls shall not be obligated to provide NuVasive in any particular month with more than *** percent (***%) in excess of the quantities of Products forecasted for that month; and provided further that the mere failure, in and of itself, of Pearsalls to meet any order in excess of the forecasted amounts and sizes shall not bring into effect the provisions of Section 5.1 nor be a default for the purposes of Section 12.2.3.

4.4 Supply. Pearsalls shall supply the Products in accordance with the Product Specifications then in effect. Pearsalls shall manufacture the Products in compliance with cGMP and applicable Quality Standards.

4.5 Subcontractors. Pearsalls shall have the right to obtain components for the manufacture and assembly of the Products from the suppliers listed in Exhibit F and from such other third parties as may be approved by NuVasive, such approval not to be unreasonably withheld or delayed. Furthermore, NuVasive may require Pearsalls to switch suppliers; provided that if NuVasive requires such change for reasons unrelated to the past underperformance of the terminated supplier, including such supplier’s failure to meet applicable quality standards, and the change would be a Material Change, it must be implemented through a Change Order in accordance with Article 3. Pearsalls shall not be responsible for any delays in delivery, any non-conformity of Products to their Product Specifications or any other breach of its obligations hereunder to the extent such delay, non-conformity or other breach is the fault of a supplier selected solely by NuVasive.

4.6 Exclusivity. Pearsalls shall be the exclusive supplier of Cervical Spine Products to NuVasive during the Term, except as provided in Article 5.

4.7 Delivery.

4.7.1 All Products delivered to NuVasive shall be FCA (INCOTERMS 2000) NuVasive’s identified delivery point, which shall be specified at the time that the Products are ordered by NuVasive. Pearsalls shall use commercially reasonable
efforts to deliver ordered Products within the time frame agreed to by the parties and shall arrange all insurance (in amounts that NuVasive shall reasonably determine) and transportation as specified in writing from time to time by NuVasive. NuVasive shall reimburse Pearsalls for the cost of insurance and transportation. To the extent reasonably possible, all customs, duties, costs, taxes, insurance premiums, and other expenses relating to such transportation and delivery shall be prepaid by Pearsalls and added to the invoice.

4.7.2 Pearsalls shall package the Products in accordance with their Packaging Specifications. Pearsalls will (i) retain all original quality and testing records, which shall be in a form reasonably acceptable for submission to all applicable Regulatory Authorities and shall be available for inspection by NuVasive from time to time upon reasonable notice to Pearsalls, and (ii) include with each shipment copies of all applicable quality and testing records and a Certificate of Conformity signed by a Pearsalls administrator with authority to bind Pearsalls that manufacture was in accordance with applicable Quality Standards and that the Products conform to the Product Specifications and have been packaged in conformance with the Packaging Specifications.

4.8 Rejection of Product in Case of Nonconformity

4.8.1 Within thirty (30) days of receipt of any shipment of Products, NuVasive may reject any portion of such shipment which is (a) not conforming to the Product Specifications or Packaging Specifications, (b) damaged during shipment as a result of Pearsalls having not packaged the Products in conformance with the Packaging Specifications or (c) adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the “Act”) or any similar provisions of any other Applicable Law. If no notice of intent to reject is timely received by Pearsalls, NuVasive shall be deemed to have accepted such delivery of Products; provided, however, in the case of Products having latent defects which upon visual examination, without opening the sterile packaging, by NuVasive upon receipt could not reasonably have been discovered, NuVasive must give notice of NuVasive’s intent to reject within thirty (30) days after discovery of such defects; provided that such notice may in no event be given later than thirty (30) days after the earlier of (a) *** years from the delivery date, and (b) the expiration date on the label of such Product.

4.8.2 In order to reject a shipment, NuVasive must (a) give notice to Pearsalls of NuVasive’s intent to reject the shipment within thirty (30) days of receipt together with a written indication of the reasons for such rejection, and (b) as promptly as commercially reasonable thereafter, provide Pearsalls with notice of final rejection and the full basis therefor.

4.8.3 Pearsalls shall replace as soon as reasonably practicable and at its cost, including shipping and insurance, all Products that have been properly rejected by

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4.9 **Product Warranty.**

4.9.1 Pearsalls represents and warrants to NuVasive that at the time of delivery to NuVasive the Products will: (i) be new and conform in all respects to the Product Specifications in effect at the time of shipment; (ii) have been manufactured in accordance with the Quality Agreement and in accordance with the Quality Standards and all other Applicable Law; (iii) be packaged in accordance with the Packaging Specifications in effect at the time of shipment, (iv) not be adulterated or misbranded within the meaning of the Act, and (v) be free and clear of any and all liens and encumbrances of whatsoever nature and kind. Pearsalls further represents and warrants that (vi) all suture raw material used in the Products will be in compliance with FDA approval requirements at the time of manufacture of such Products, and (viii) the Products will be free from all defects in workmanship and materials at the time of delivery to NuVasive and for the period from the date of delivery until the earlier of (a) the expiration date on the labels of the Products, and (b) *** years from the date of delivery of the Products, provided that the Products are stored under the conditions stated on their labels.

4.9.2 EXCEPT FOR THE FOREGOING WARRANTIES, PEARSALLS DOES NOT MAKE ANY OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The foregoing limitation of warranties, however, shall not in any way limit NuVasive’s rights to indemnification under this Agreement.

4.10 **Inventory.** Pearsalls shall manufacture and maintain at all times during the Term a one (1) month inventory of Products and a two (2) month inventory of components for Products, which inventory shall be adjusted to meet the then-current one (1) month Forecast within a commercially reasonable period of time after receipt of a new Forecast that is significantly higher than the previous Forecast for such period; provided that, there will be no inventory requirements for the Nottingham Rotator Cuff Product. Notwithstanding the foregoing, the parties agree that if a Forecast for a particular Product Category is more than ***% higher than the previous Forecast for such Product Category or if NuVasive makes a change in the Packaging Specifications, that Pearsalls shall have a commercially reasonable time to adjust its inventory of Products and components appropriately. In the event that a change in inventory required under this Agreement will not be completed more than thirty (30) days after Pearsalls’ receipt of a new Forecast, Pearsalls shall notify NuVasive and the parties will work together in good faith to minimize the commercial impact on NuVasive of the time required to implement the change.

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4.11 Location of Manufacture. Pearsalls shall manufacture the Products only at its facility located in Taunton, United Kingdom, unless the manufacture of Products at any different facility is authorized in writing by NuVasive, which authorization shall not be unreasonably withheld or delayed.

4.12 Supply of Components by NuVasive. NuVasive shall have the right, in its sole discretion, to supply materials or components of the Product to Pearsalls. Pearsalls shall not warrant under Section 4.9.1 of this Agreement those supply materials or components supplied by NuVasive and shall not be responsible for any breach of its obligations hereunder that may arise from NuVasive’s supply of materials or components.

5. ALTERNATIVE SUPPLY

5.1 Alternative Supply. Notwithstanding anything to the contrary herein, NuVasive shall have the right, in its sole discretion, to have all or part of its requirements for the Cervical Spine Product manufactured by itself or third parties, subject to the terms of this Agreement, upon thirty (30) days notice to Pearsalls under any of the circumstances set forth in Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.6 or 5.1.7:

5.1.1 In any single month, Pearsalls is unable to deliver, for any reason, at least *** percent (***%) of the lower of (a) the quantity of Cervical Spine Products ordered by NuVasive for delivery during such period, or (b) the aggregate quantity of the monthly requirement for Cervical Spine Products forecasted for such month at least three (3) months prior to the month in question, in each case without regard to Product Category;

5.1.2 In any three (3) consecutive months, or any four (4) months in any consecutive twelve (12) month period, Pearsalls is unable to deliver, for any reason other than Force Majeure, at least *** percent (***%) of the lower of (a) the quantity of the Cervical Spine Products ordered by NuVasive for delivery during such period, or, (b) the aggregate quantity of the monthly requirement for Cervical Spine Products forecasted for such month at least three (3) months prior to each month in question, in each case without regard to Product Category;

5.1.3 In any three (3) consecutive months, or any four (4) months in any consecutive twelve (12) month period, Pearsalls is unable to deliver, for any reason constituting Force Majeure, at least *** percent (***%) of the lower of (a) the quantity of the Cervical Spine Products ordered by NuVasive for delivery during such period, or, (b) the aggregate quantity of the monthly requirement for Cervical Spine Products forecasted for such month at least three (3) months prior to each month in question, in each case without regard to Product Category;

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5.1.4 In any two (2) consecutive months, or any three (3) months in any consecutive twelve (12) month period, more than *** percent (***)% of the Cervical Spine Products delivered to NuVasive either fail to conform to the Product Specifications or are not packaged in accordance with the Packaging Specifications; provided that, NuVasive must give prompt notice to Pearsalls with respect to the first month in which such a failure occurs and such first month shall not be counted for purposes of this Section 5.1.4 if Pearsalls replaces the defective Products within thirty (30) days after receipt of such notice.

5.1.5 If at any time Pearsalls is not in material compliance with all of the Quality Standards and fails to correct such non-compliance within thirty (30) days after notice; provided that, Pearsalls shall have the right to cure a breach of this Section 5.1.5 only once in any consecutive twelve (12) month period;

5.1.6 In the event of a Change of Control of Pearsalls in which the successor in interest is an entity that NuVasive deems (in its reasonable discretion) to be a business competitor of NuVasive; provided that, this provision shall not apply to any Change of Control in which the successor in interest is an entity with respect to which NuVasive affirmed in writing to Pearsalls in advance of the Change of Control not to be a business competitor of NuVasive;

5.1.7 Where none of Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5 nor 5.1.6 apply, and NuVasive elects to establish for its convenience alternative sources of supply, whether in addition to or in lieu of Pearsalls, all Products manufactured by an alternative source of supply shall be subject to the payments described in Section 5.2.

5.1.8 Pearsalls shall notify NuVasive immediately if any of the circumstances set forth in Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6 or 5.1.7 appear likely to occur.

5.2 Alternative Manufacturing License. Pearsalls hereby grants to NuVasive, effective upon the earlier of (i) the expiration or termination of this Agreement, (ii) the exercise by NuVasive of its rights to transfer all or part of the Cervical Spine Product manufacturing to a third party consistent with Section 5.1 during the Term, or (iii) any event which causes Pearsalls to undergo or be subject to any of the circumstances set forth in Sections 12.2.1 or 12.2.2, a non-exclusive license under the Pearsalls Technology to make, have made, offer for sale, sell, distribute, have distributed, export, have exported, import and have imported, and otherwise exploit the Products for all purposes in the Territory, including the right to sublicense (the “Alternative Manufacturing License”). Upon the occurrence of any condition set forth in Sections 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6 or 5.1.7, the Alternative Manufacturing License shall take effect upon thirty (30) days notice from NuVasive, with no further consent or action required on either party’s part. The Alternative Manufacturing License shall be royalty-free and no additional consideration shall be due to Pearsalls thereunder except if NuVasive elects to establish an additional source or sources of supply pursuant to Section 5.1.7, in which

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5.3 **Cooperation and Assistance.** Upon NuVasive’s exercise of its alternative manufacturing rights under Sections 5.1 and 5.2, Pearsalls shall provide, subject only to NuVasive’s reimbursement of Pearsalls’ reasonable out-of-pocket expenses, all information, cooperation and assistance reasonably requested by NuVasive or its designees for the purpose of establishing the permitted alternative manufacturing arrangements. Such information, cooperation and assistance shall include the communication and transfer of all know-how (including the Manufacturing Know-How) under the control of Pearsalls or its Affiliates or subcontractors relating to the design, manufacture, packaging and supply of the Products.

6. **OWNERSHIP**

6.1 **Intellectual Property.** As between the parties, NuVasive exclusively shall have all right, title and interest in any Inventions made or conceived or reduced to practice solely by or on behalf of NuVasive or the parties jointly in the course of performing this Agreement. For those Inventions solely conceived by or on behalf of NuVasive or jointly conceived by the parties, NuVasive hereby grants Pearsalls a non-exclusive, royalty-free license to make, use, have made, export and supply such Inventions during the Term anywhere in the world either for or at the direction of NuVasive. For Inventions solely conceived by Pearsalls, Pearsalls hereby grants NuVasive an irrevocable, perpetual, royalty-free sole license with right of sublicense to make, use, have made, export, offer for sale, and sell such Inventions anywhere in the world; provided that, such license shall terminate automatically in the event that Pearsalls exercises any Right of Reversion that arises under the Asset Purchase Agreement. For purposes of the foregoing license grant, “sole” shall mean exclusive except as to Pearsalls’ use of such Inventions on its own behalf or within its manufacturing operations. Pearsalls agrees that it shall not grant any third-party licenses under the Inventions, or otherwise allow any third parties to use, the Inventions, unless the license to NuVasive has terminated as provided above.

6.2 **Patent Filings.**

6.2.1 NuVasive, has the right, but not the obligation to file all patent applications relating to the Inventions conceived solely by or on behalf of NuVasive or jointly by or on behalf of the parties.

6.2.2 Pearsalls has the right, but not the obligation to file all patent applications relating to the Inventions conceived solely by or on behalf of Pearsalls. If Pearsalls for any reason determines not to file or continue prosecution of a given patent application, it shall promptly notify NuVasive, and NuVasive shall thereafter at its sole expense succeed to the rights in respect of such patents issuing thereon.

6.3 **Assignment.** Pearsalls hereby agrees to make any assignments necessary to accomplish the ownership provision set forth for the jointly conceived Inventions in
Section 6.1 and shall promptly sign all documents and provide, at NuVasive’s expense, information reasonably requested by NuVasive in connection with the patent applications as described in Section 6.2. In interpreting Section 6.1, anything made or conceived or reduced to practice by an employee or contractor of Pearsalls in the course of performance under this Agreement will be deemed so made or conceived or reduced to practice by Pearsalls; and Pearsalls, as of the Effective Date and throughout the Term, has and will have appropriate agreements with all such employees and contractors necessary to fully effect the provisions of this Section. NuVasive will have the exclusive right to, and, at NuVasive’s expense, Pearsalls agrees to assist NuVasive in every proper way (including becoming a nominal party) to, evidence, record and perfect the assignment and to apply for and obtain recordation of and from time to time enforce, maintain and defend such proprietary rights. In the event that NuVasive is unable for any reason whatsoever to secure Pearsalls’ signature to any document it is entitled to under this Section, Pearsalls hereby irrevocably designates and appoints NuVasive and its duly authorized officers and agents, as its agents and attorneys-in-fact to act for and in its behalf and instead of Pearsalls, to execute and file any such document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Pearsalls.

6.4 Enforcement of Patent Rights. NuVasive in the case of all NuVasive Technology and all Inventions solely conceived by NuVasive and jointly conceived by the parties, and Pearsalls in the case of all Pearsalls Technology and all Inventions solely conceived by Pearsalls, shall have the right, at its expense, to determine the appropriate course of action to enforce such rights or otherwise abate the infringement thereof, to take (or refrain from taking) appropriate action to enforce such rights, to control any litigation or other enforcement action and to enter into, or permit, the settlement of any such litigation or other enforcement action with respect to such rights, and in good faith shall consider the interests of the other party, if any, in so doing. In the case of actions by Pearsalls to enforce the Pearsalls Technology, NuVasive shall have the right to participate fully with Pearsalls in the conduct of the action, including any settlement discussions or decisions, at NuVasive’s expense and with counsel of its choice; provided that, only Pearsalls shall make decisions with respect to settlements that result in any payment by Pearsalls or the imposition of any other obligation or restriction on Pearsalls, including an injunction. Notwithstanding the foregoing, NuVasive and Pearsalls shall fully cooperate with each other in any action to enforce any such rights.

7. LICENSES

7.1 NuVasive License to Pearsalls. Subject to the terms and conditions of this Agreement and for the Term, NuVasive hereby grants to Pearsalls and its Affiliates a revocable, royalty-free, worldwide, nonexclusive, nontransferable, nonassignable license, with no right to sublicense without NuVasive’s prior written consent, to use the NuVasive Technology, including the Ellis Licence and the Inventions, solely to manufacture, assemble and deliver to NuVasive or to its designated agents the Products pursuant to Section 4 hereof.
7.2 **Background License.** With respect to any Pearsalls Invention relating to a Product that is developed or assigned hereunder and is based on, or incorporates, or is an improvement or derivative of, or cannot be reasonably made, used, modified, maintained, supported, reproduced or distributed without using or violating, any rights of Pearsalls to the Pearsalls Technology or any other rights of Pearsalls, Pearsalls hereby grants NuVasive a perpetual, worldwide, royalty-free, nonexclusive, sublicensable right and license (the "Background License") to exploit and exercise all such rights in support of NuVasive's or its sublicensees' exercise or exploitation of such Invention only for purposes of making, using, maintaining, supporting, reproducing, offering to sell, selling, distributing or otherwise exploiting the related Product.

8. **REPORTS AND PAYMENTS**

8.1 **Payments for Manufacture of Products.**

8.1.1 In connection with the manufacture and supply of Products hereunder, NuVasive shall pay Pearsalls an amount as set forth on Exhibit C.

8.1.2 In the event that the total cost of manufacturing any of the Products increases from the applicable Base Cost for such Product by more than twenty-five percent (25%) as a result of factors outside the reasonable control of Pearsalls (e.g., inflationary increases over time or a Force Majeure event as defined in Section 14), as reasonably documented in writing by Pearsalls, the parties shall negotiate in good faith a reasonable increase in the price payable by NuVasive for the Product, as well as an appropriate change in the Product’s Base Cost. If the parties are unable to reach an agreement within thirty (30) days after written notice by Pearsalls to NuVasive, then either party may refer the issue to an expert reasonably agreed upon by the parties; provided that, if the parties cannot agree on an expert within thirty (30) days after the notice was received, the parties shall engage in the dispute resolution process described in Section 16.3.

8.2 **Payment Terms.** All payments to Pearsalls under this Agreement are to be made in US dollars and shall be paid within thirty (30) days of invoice, which Pearsalls shall issue, as applicable, monthly or when or after it ships the Products to NuVasive or its designee. Interest at a monthly rate of one percent (1%) shall accrue on all payments that are not the subject of a dispute in good faith and are not made within the aforementioned thirty (30) day period. Further, in the event that NuVasive fails to pay any material portion of an invoice that is not the subject of a dispute in good faith for more than sixty (60) days after the date of such invoice, Pearsalls may suspend its obligation to manufacture and deliver Products to NuVasive until such time as NuVasive is no longer in arrears.

9. **COMPLIANCE WITH LAW; REGULATORY AFFAIRS; RECALLS**

9.1 **Compliance with Law.** Each party shall maintain in full force and affect all necessary licenses, permits and other authorizations required by law to carry out its duties and obligations under this Agreement. Each party shall comply with all Applicable Laws.
in performing its obligations and exercising its rights under this Agreement. Pearsalls and NuVasive each shall keep all records and reports required to be kept by Applicable Law. The parties will reasonably cooperate with one another with the goal of ensuring full compliance with Applicable Law. Each party will cooperate with the other to provide such letters, documentation and other information on a timely basis as the other party may reasonably require to fulfill its reporting and other obligations under Applicable Laws to applicable Regulatory Authorities. Except for such amounts as are expressly required to be paid by a party to the other under this Agreement, each party shall be solely responsible for any costs incurred by it to comply with its obligations under Applicable Laws.

9.2 **Reasonable Cooperation.** Pearsalls shall use its reasonable and diligent efforts to (a) during clinical trials, support all modifications to Products to the extent and in such manner as NuVasive may request in an effort to obtain regulatory approval of such Products, and (b) supply such drawings and specifications of the Products as NuVasive may reasonably require to evaluate and obtain regulatory approval of the Products; provided, however, that Pearsalls shall not be required to (i) pay money (other than as expressly required pursuant to this Agreement), or (ii) assume any other material obligation not otherwise required to be assumed by this Agreement.

9.3 **Maintenance and Inspection of Facilities and Records.** Pearsalls shall maintain at its sole cost all government approvals of its facilities, including all Regulatory Authority approvals, shall maintain adequate premises, equipment, and experienced and competent personnel, and shall maintain accurate and complete records of all methods, tests, procedures and results of its work, that are required to manufacture and assemble the Products in compliance with cGMP and applicable Quality Standards. NuVasive shall have the right, upon reasonable notice and during regular business hours, to conduct quality assurance audits of the facilities used by Pearsall for the manufacture of Products and records of Pearsalls and of all third parties whose facilities are used for the manufacture of any portion of the Product for compliance with Regulatory Authority standards, including cGMP. Pearsalls will also (a) inform NuVasive in writing in advance of any proposed inspection by any governmental agency of the Pearsalls facilities where the Product is manufactured or assembled and of the results of any such inspection and (b) permit NuVasive to participate in any such inspection of the Pearsalls facilities.

9.4 **Adverse Events Reporting and Product Information Requests.**

9.4.1 **Adverse Reaction Reporting.** During the Term, each party shall immediately, but in any case within twenty-four (24) hours, notify the other party, by facsimile or telephone, of any adverse patient experience involving the Product of which it becomes aware.

9.4.2 **Product Information Requests.** Information concerning any complaints, inquiries and/or information requests from consumers, physicians, or other third parties regarding the Product shall be forwarded to NuVasive within three (3) business days of Pearsalls’ receipt of the information and/or inquiry. NuVasive
shall respond to such complaints and inquiries, if necessary, in accordance with its usual and customary procedures. NuVasive shall supply
Pearsalls, for Pearsalls' information purposes only, with copies of its standard response information for the Products as well as any updates
thereto.

9.4.3 Governmental Reports. NuVasive shall be responsible for filing with the appropriate Regulatory Authorities any required adverse
reaction reports that it receives directly from third parties and any adverse reaction reports that it receives through Pearsalls.

9.5 Recalls.

9.5.1 Recalls. In the event (i) any government authority issues a request, directive or order that a Product be recalled, or (ii) a court of
competent jurisdiction orders such a recall, or (iii) NuVasive reasonably determines that a Product should be recalled, the parties shall take
all appropriate corrective actions. In the event that such recall results from the manufacture, packaging, storage, testing and handling of the
Product by Pearsalls and such recall or event is due solely to Pearsalls' negligence or willful misconduct, or Pearsalls' failure to manufacture
Products according to the Product Specifications or package Products according to the Packaging Specifications, Pearsalls shall be
responsible for all reasonable expenses of the recall. In all other cases, NuVasive shall be responsible for the expenses of the recall. For the
purposes of this Agreement, the expenses of recall shall include, without limitation, the expenses of notification and destruction or return of
the recalled Product, and the amounts paid by NuVasive for the Products recalled.

9.5.2 Recall Coordination. All coordination of any recall or field correction activities involving Products shall be handled by
NuVasive.

9.5.3 Recall Records. Each of the parties shall maintain complete and accurate recall records of all the Products sold by it for such
periods as may be required by Applicable Law, but in no event less than three (3) years after the date of the recall.

10. REPRESENTATIONS AND WARRANTIES

10.1 Corporate Existence. Pearsalls hereby represents and warrants to NuVasive that Pearsalls is a private company limited by shares duly
formed, validly existing and in good standing under the laws of England and Wales. NuVasive hereby represents and warrants to Pearsalls that
NuVasive is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

10.2 Corporate Power. Each party hereby represents and warrants to the other party that such party (a) has the corporate power and authority and
the legal right to own and operate its property and assets, to lease the property and assets it operates under lease, and to carry on its business as it is
now being conducted and (b) is in compliance with all requirements of Applicable Law, except to the extent that any noncompliance would not
have a material adverse effect on the properties, business, financial or other condition of such party and would not materially adversely affect such party’s ability to perform its obligations under this Agreement.

10.3 **Authorization and Enforcement of Obligations.** Each party hereby represents and warrants to the other party that such party (a) has the corporate power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder and (b) has taken all necessary corporate action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms.

10.4 **No Conflict.** Each party hereby represents and warrants to the other party that the execution and delivery of this Agreement and the performance of such party’s obligations hereunder (a) do not conflict with or violate any requirement of Applicable Law or any contractual obligation of such party and (b) do not conflict with, or constitute a default or require any consent under, any contractual obligation of such party.

11. **CONFIDENTIALITY**

11.1 **Nondisclosure Obligations.** Except as otherwise provided in this Section 11, both parties shall maintain in confidence, and use only for purposes of this Agreement, (a) all information and data resulting from or related specifically to the manufacture of Products and (b) all information and data not described in clause (a) above but supplied by the other party (i) under this Agreement and marked “Confidential” or (ii) prior to the Effective Date under the terms of any nondisclosure agreements between the parties. For purposes of this Section 11, information and data described in clause (a) or (b) above shall be referred to as “Confidential Information.” Notwithstanding the foregoing, the parties acknowledge and agree that information and data of Pearsalls that is not identified as specific to any Product or group of Products and results from or is related in general to the manufacturing operations of Pearsalls shall not be Confidential Information. Data and information transferred by Pearsalls to NuVasive pursuant to this Agreement and pertaining only to a specific Product including, but not limited to, its composition, manufacture, testing, handling or otherwise, shall be the Confidential Information of NuVasive.

11.2 **Permitted Disclosures.** To the extent it is reasonably necessary or appropriate to fulfill its obligations or exercise its rights under this Agreement, (a) a party may disclose Confidential Information it is otherwise obligated under this Section 11 not to disclose to its Affiliates, sublicensees, consultants, outside contractors and clinical investigators, on a need-to-know basis, provided that such persons have entered into a written agreement obligating them to keep the Confidential Information confidential and not use the Confidential Information for the same time periods and to the same extent as such party is required under this Agreement; and (b) a party may disclose such Confidential Information to government or other Regulatory Authorities to the extent that such disclosure is required by Applicable Law or court order, or is reasonably necessary to
obtain patents or authorizations to conduct clinical trials with, and to commercially market the Product, provided that the disclosing party shall provide written notice to the other party and sufficient opportunity to object to such disclosure or to request confidential treatment thereof.

11.3 Information that is Not Confidential. The obligation not to disclose or use Confidential Information shall not apply to any part of such Confidential Information that (a) is or becomes patented, published or otherwise part of the public domain other than by acts of the party obligated not to disclose such Confidential Information or its Affiliates or sublicensees in contravention of this Agreement; (b) is disclosed to the party desiring to make such use or disclosure or to its Affiliates or sublicensees by a third party, provided such Confidential Information was not obtained by such third party directly or indirectly from the other party under this Agreement on a confidential basis; (c) prior to disclosure under this Agreement, was already in the possession of the party desiring to make such use or disclosure or to its Affiliates or sublicensees, provided such Confidential Information was not obtained directly or indirectly from the other party under this Agreement; or (d) is disclosed in a press release agreed to by both parties hereto, which agreement shall not be unreasonably withheld by either party. Notwithstanding the foregoing, all Confidential Information designated as owned by or assigned to a party in connection with this Agreement shall be deemed Confidential Information of such party whether or not it was disclosed by such party to the other and exception (c) above will not be applicable thereto.

11.4 Terms of this Agreement. Neither party shall disclose any terms or conditions of this Agreement to any third party without the prior consent of the other party, except as required by Applicable Law or court order, provided that the party required to make such disclosure shall provide written notice to the other party as soon as practicable in order to afford such party an opportunity to avoid the disclosure or seek a protective order.

12. TERM AND TERMINATION

12.1 Term. This Agreement shall take effect on the Effective Date and, unless terminated earlier pursuant to this Section 12, shall remain in effect until *** (the “Term”) and thereafter be automatically renewed for successive one (1) month terms, unless either party gives thirty (30) days’ notice of termination prior to the end of the then-current term. Immediately after the end of the initial Term, the then-current prices for the Cervical Spine Product shall be negotiated by the parties.

12.2 Termination for Cause. Either party may terminate this Agreement, at its option, upon the occurrence of any of the following:

12.2.1 The other party (a) seeks the liquidation, reorganization, dissolution or winding up of itself (other than dissolution or winding up for the purposes of solvent reorganization or amalgamation) or the composition or readjustment of all or substantially all of its debts, (b) applies for or consents to the appointment of,

*** Material has been omitted pursuant to a request for confidential treatment.

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or the taking of possession by, a receiver, custodian, trustee or liquidator (or the equivalent under the laws of any foreign jurisdiction) of itself or of all or substantially all of its assets, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the United States Bankruptcy Code or any similar insolvency law of any foreign jurisdiction, (e) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts, or (f) adopts any resolution of its Board of Directors or stockholders for the purpose of effecting any of the foregoing; or

12.2.2 A proceeding or case is commenced without the application or consent of the other party and such proceeding or case continues undismissed, or an order, judgment or decree approving or ordering any of the following is entered and continues unstayed in effect, for a period of ninety (90) days from and after the date service of process is effected upon the other party, seeking (a) its liquidation, reorganization, dissolution or winding up, or the composition or readjustment of all or substantially all of its debts, (b) the appointment of a trustee, receiver, custodian, liquidator or the like of itself or of all or substantially all of its assets, or (c) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts; or

12.2.3 Upon or after the breach of any material agreement, condition or covenant of this Agreement, if the breaching party has not cured such breach within ninety (90) days after written notice thereof from the other party.

12.3 Effect of Expiration or Termination

12.3.1 Expiration or termination of this Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination. The provisions of Sections 1, 4.9.1(viii), 5, 6, 7.2, 8.2, 9.3, 9.4, 9.5, 11, 12, 13 and 16 shall survive the expiration or termination of this Agreement.

12.3.2 Each party will promptly return all Confidential Information and all materials or documents embodying the Intellectual Property of the other (and all copies and abstracts thereof) that it is not entitled to use under the surviving terms of this Agreement.

12.3.3 Upon the expiration or termination of this Agreement for any reason, except by Pearsalls pursuant to Section 12.2;

(a) NuVasive shall have the right to exercise the Alternative Manufacturing License with no obligation to pay any fees, royalties or other consideration to Pearsalls (or its successor) under this Agreement, but NuVasive shall remain under obligation to pay any remaining payments and royalties due under the Asset Purchase Agreement;

(b) Pearsalls shall (i) transfer to NuVasive (or its designee) all documentation, relevant Manufacturing Know-How and materials not already in
NuVasive’s possession that are reasonably necessary to enable NuVasive or such designee to manufacture commercial quantities of the Products and (ii) comply with applicable regulatory requirements in connection with such transfer. The Parties shall use commercially reasonable efforts to implement any technology transfers pursuant to this Section 12.3.3 sufficiently in advance of any such termination event or expiration; and

(c) NuVasive shall have the right to purchase: (i) Pearsalls’ inventory of finished Products, if any, at the price set forth in the applicable Terms of Sale; and (ii) Pearsalls’ stock of materials used in the manufacture of the Products at the price paid by Pearsalls for such materials.

13. INDEMNIFICATION

13.1 Pearsalls Indemnification. Pearsalls shall indemnify NuVasive against any and all liability, damages, cost and expenses, including reasonable attorneys’ fees, made against or sustained by NuVasive arising from any third-party claim that arises from (i) Pearsalls’ gross negligence or willful misconduct in the performance of its obligations hereunder, (ii) Pearsalls’ failure to deliver Products in accordance with Pearsalls’ warranties as provided in Section 4.9 of this Agreement, (iii) the infringement by the Pearsalls Technology or any Invention that is made, conceived or reduced to practice solely by Pearsalls of any Intellectual Property Rights of any third party; or (iv) Pearsalls’ violation of applicable law.

13.2 NuVasive Indemnification. NuVasive shall indemnify Pearsalls against any and all liability, damages, cost and expenses, including reasonable attorneys’ fees, made against or sustained by Pearsalls arising from any third-party claim that arises from the infringement by the NuVasive Technology, excluding the Medical Device Intellectual Property, of any Intellectual Property Rights of any third party.

13.3 Indemnity Exclusions and Requirements. (a) In order for an indemnified party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim made by any third party against the indemnified party (a “Third Party Claim”), the indemnified party must notify the indemnifying party in writing of the Third Party Claim (a “Third Party Claim Notice”) promptly following receipt by such indemnified party of written notice of the Third Party Claim, which notification, to be a valid Third Party Claim Notice (a “Valid Third Party Claim Notice”), must be accompanied by a copy of the written notice, if any, of the third party claimant to the indemnified party asserting the Third Party Claim; provided, that the failure to provide such notice promptly shall not affect the obligations of the indemnifying party hereunder except to the extent the indemnifying party is prejudiced thereby. The indemnified party shall deliver to the indemnifying party copies of all other notices and documents (including court papers), if any, received by the indemnified party relating to the Third Party Claim.

(b) The indemnifying party shall have the right to defend against any such Third Party Claim (including to conduct any proceedings or settlement negotiations) with
counsel of its own choosing. The indemnified party shall have the right to participate in the defense of any Third Party Claim (including the right to participate in any settlement negotiations) and to employ its own counsel (it being understood that the indemnifying party shall control such defense and settlement negotiations), at its own expense, provided, however, that if the indemnified party reasonably concludes, based on reasonable advice from counsel, that the indemnifying party and the indemnified party have adversely conflicting interests with respect to such Third Party Claim, the reasonable fees and expenses of counsel to the indemnified party solely in connection therewith shall be paid by the indemnifying party; provided, however, that in no event shall the indemnifying party be responsible for the fees and expenses of more than one counsel for all indemnified parties. Whether or not the indemnified party participates in the defense of any Third Party Claim, the indemnified party shall be entitled to reasonable notice of all court appearances and settlement negotiations and, to the extent requested by the indemnified party, copies of all proceedings filed with any governmental authority in connection with such Third Party Claim. Prior to the time the indemnified party is notified by the indemnifying party as to whether the indemnifying party will assume the defense of a Third Party Claim, the indemnified party shall take all actions reasonably necessary to timely preserve the collective rights of the parties with respect to such Third Party Claim, including responding timely to legal process. If the indemnifying party shall decline to assume the defense of a Third Party Claim (or shall fail to notify the indemnified party of its election to defend such Third Party Claim) within thirty (30) days after the giving by the indemnified party to the indemnifying party of a Valid Third Party Claim Notice with respect to the Third Party Claim, the indemnified party shall defend against the Third Party Claim and the indemnifying party shall be liable to the indemnified party for all reasonable fees and expenses incurred by the indemnified party in the defense of the Third Party Claim, including the reasonable fees and expenses of counsel employed by the indemnified party, if and to the extent that the indemnifying party is responsible to indemnify for such Third Party Claim. Regardless of which party assumes the defense of a Third Party Claim, the parties agree to cooperate with one another in connection therewith. Such cooperation shall include providing records and information that are relevant to such Third Party Claim, and making employees and officers available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to act as a witness or respond to legal process; provided, that the indemnifying party shall reimburse the indemnified party for its reasonable out-of-pocket expenses incurred in connection with the fulfillment of the indemnified party’s obligations under this sentence. Whether or not the indemnifying party assumes the defense of a Third Party Claim, the indemnified party shall not admit any liability, consent to the entry of judgment with respect to, or settle, compromise or discharge, such Third Party Claim without the indemnifying party’s prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), provided, however, that the indemnified party may admit liability, consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge such Third Party Claim without the consent of the indemnifying party if it releases the indemnifying party from any liability with respect to the Third Party Claim, or if the indemnifying party would have no liability with respect thereto. If the indemnifying party assumes the defense of any Third Party Claim, the indemnifying
party shall have the right to consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge, such Third Party Claim; provided, however, that the indemnifying party shall not, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld, delayed or conditioned), consent to the entry of judgment with respect to, or otherwise settle, compromise or discharge, any Third Party Claim if such judgment, settlement, compromise or discharge involves equitable or other non-monetary damages or otherwise requires the indemnified party or any of its Affiliates to pay any amount to any Person, including the indemnifying party, or to take any action or refrain from taking any action (other than the execution of a customary release or covenant not to sue). Any final and non-appealable judgment entered or settlement agreed upon with respect to a Third Party Claim shall be binding upon the indemnifying party, and shall be paid within ten (10) days of the date of the relevant final judgment or settlement agreement.

(c) Incidental and Consequential Damages. EXCEPT (a) FOR A PARTY’S LIABILITY FOR DEATH OR BODILY INJURY OF A PERSON, (b) FRAUDULENT MISREPRESENTATION, (c) ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, (d) ANY INDEMNITY OBLIGATION HEREUNDER, OR (e) A BREACH OF SECTION 11, NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES SUCH AS LOSSES OF REVENUES, BUSINESS, GOODWILL OR PROFITS WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT.

13.4 Insurance. NuVasive and Pearsalls each shall obtain liability insurance with respect to its activities contemplated by this Agreement in such amounts as are customary for companies engaged in similar activities. NuVasive and Pearsalls shall each provide evidence of such insurance to the other party upon reasonable request and shall each maintain such insurance for so long as each continues to conduct such activities, and thereafter for so long as each customarily maintains insurance for itself covering similar activities.

14. FORCE MAJEURE

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any Term (except for a failure to pay money) when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to unusually large fluctuations or instability in the market for raw materials or components, fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party (“Force Majeure”).

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15. **ASSIGNMENT**

This Agreement may not be assigned or otherwise transferred, nor, except as expressly provided hereunder, may any right or obligations hereunder be assigned or transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed); provided, however, that either party may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its business relating to this Agreement, or in the event of its merger or consolidation or Change of Control or similar transaction if (a) the assignee has the financial wherewithal to perform its obligations hereunder, as reasonably demonstrated by such assignee, or (b) the assignment does not relieve the assignor of any of its obligations under this Agreement. In any case, the assignee shall execute a counterpart of this Agreement agreeing to be bound by the provisions hereof; in the case of (b), the counterpart shall acknowledge that it shall be jointly and severally liable with the assignor and any other assignee of such assignor for all the obligations of the assignor hereunder. Notwithstanding any provision herein to the contrary, NuVasive shall have the right to establish an alternative source of supply, as provided in Section 5.1.6, and to have the Alternative Manufacturing License take effect, as specified in Section 5.2, in the event of any Change of Control of Pearsalls in which (a) the successor in interest is an entity that NuVasive deems (in its reasonable discretion) to be a business competitor of NuVasive, and (b) NuVasive did not affirm in writing to Pearsalls in advance of the Change of Control that the successor in interest is not a business competitor of NuVasive.

16. **MISCELLANEOUS**

16.1 **Notices.** All notices, requests, consents, instructions or other communications or other documents required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally via telex or five (5) days after being sent, when sent by registered or certified mail, or one (1) day after being sent, when sent by overnight courier, addressed as follows:

If to NuVasive, to:

NuVasive, Inc.
4545 Towne Centre Court
San Diego, California 92121
United States
Attention: Jason Hannon, Vice President, Legal
Facsimile: (858) 909-2000

with a copy to:

Heller Ehrman LLP
4350 La Jolla Village Drive, 7th Floor
San Diego, CA 92122
United States
Attention: Michael S. Kagnoff, Esq.
Facsimile: (858) 450-8499

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If to Pearsalls, to:

Pearsalls Limited
Tancred Street, Taunton
Somerset, TA1 1RY
United Kingdom
Attention: D. Lawson Lyon, Managing Director
Facsimile: 011-1823-336-824

with a copy to:

Gardner Carton & Douglas LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
United States
Attention: Cathy Kiselyak Austin
Facsimile: (312) 569-3455

or to such other address as such party may indicate by a notice delivered to the other parties hereto.

16.2 Severability. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

16.3 Applicable Law; Jurisdiction and Venue. Any dispute or claim arising out of or in connection with this Agreement will be finally settled by binding arbitration in New York, New York, in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with said rules. The arbitrator shall apply Delaware law, without reference to rules of conflicts of law or rules of statutory arbitration, to the resolution of any dispute and shall document his or her decision in writing. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

16.4 Injunctive Relief. Notwithstanding Section 16.3, either party shall be entitled to seek injunctive relief in any court of competent jurisdiction for a breach or threatened breach of Section 11 or any infringement of such party’s Intellectual Property Rights.

16.5 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, heretofore made are expressly superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both parties hereto.
16.6 **Headings.** The captions to the Sections hereof are not a part of this Agreement, but are merely guides or labels to assist in locating and reading the Sections hereof.

16.7 **Independent Contractors.** Pearsalls and NuVasive each acknowledge that they are independent contractors and that the relationship between them shall not constitute a partnership, joint venture, or agency or employer/employee relationship. Neither Pearsalls nor NuVasive shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party, without the prior consent of the other party to do so.

16.8 **Waiver.** The waiver by either party hereto of any right hereunder or of the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by the other party whether of a similar nature or otherwise.

16.9 **Construction of Agreement.** This Agreement has been negotiated by the parties hereto and their attorneys. Therefore, each party hereby waives the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

16.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be deemed to have the same effect as their originals.

16.11 **Press Releases.** Except to the extent necessary under Applicable Law, each party agrees that it will not make any press release or other public statement relating to the existence or substance of this Agreement or the matters addressed herein without the prior written consent of the other party.

16.12 **Non-Compete.** Pearsalls agrees that during the Term it will not develop, manufacture (for itself or any third party), have manufactured, market or sell any product or component thereof that is or could be competitive with the Product.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

NUVASIVE, INC.

By: /s/ Alexis V. Lukianov
Title: Chairman and CEO
Date: 8/4/05

PEARSALLS LIMITED

By: /s/ Richard C. Adloff
Title: Sr. V.P., Finance
Date: August 4, 2005

SIGNATURE PAGE TO EXCLUSIVE MANUFACTURING AGREEMENT
EXHIBIT A

PRODUCT

I. CERVICAL SPINE PRODUCT

The Cervical Spine Product has an embroidered polyester jacket that encapsulates a pre-moulded silicone core. The device is a replacement not just for the nucleus but for the entire disc. It is made in a number of sizes. Extensions of the encapsulating jacket are used to create fixation flanges to enable the secure initial mechanical fixation of the device. The jacket is manufactured from polyester suture material using a computer controlled embroidery machine.

Cervical Spine Product Fixated by Four Screws

II. NOTTINGHAM ROTATOR CUFF PRODUCT

The Nottingham Rotator Cuff Product is a CE marked device for the augmentation of a direct repair of a torn rotator cuff. The device is manufactured from polyester suture material using a computer controlled embroidery machine.
The Two Sizes of Augmentation Device

At the top is the 20mm device and below is the 30mm device, these dimensions referring to the width of the base of the mesh section at the left of the photograph. Also shown are the three fixation holes and the introducing leader.

Mounted Nuttingham Rotator Cuff Product
EXHIBIT B
SPECIFICATIONS

1. CERVICAL SPINE PRODUCT SPECIFICATIONS

COMPONENT SPECIFICATION

***

***

***

*** Material has been omitted pursuant to a request for confidential treatment.

3
Pearsalls Cervical Disc Size Range - Smallest (5S) and Largest (8XL) Discs

Device Manufacture

***

*** Material has been omitted pursuant to a request for confidential treatment.
### Device Specification Forms

<table>
<thead>
<tr>
<th>Process</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement Specification</td>
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<tr>
<td>Risk Analysis</td>
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<tr>
<td>Essential Requirement Checklist</td>
<td>***</td>
</tr>
<tr>
<td>Order Receipt/Processing Record</td>
<td>***</td>
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<tr>
<td>Component Specification Form</td>
<td>***</td>
</tr>
<tr>
<td>Device Specification Sheet</td>
<td>***</td>
</tr>
<tr>
<td>Embroidery Specification Sheets</td>
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### Manufacturing Process Records

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<td>PCD Device Finishing</td>
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<tr>
<td>PCD QC Inspection</td>
<td>***</td>
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<tr>
<td>PCD Core QC Inspection</td>
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<tr>
<td>PCD Assembly</td>
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<tr>
<td>Implant Washing</td>
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<td>Implant Packing</td>
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### Sterilization Specifications

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*** Material has been omitted pursuant to a request for confidential treatment.

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6
### Labeling and IFU Specifications (with sample labels)

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<thead>
<tr>
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<tr>
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</table>

See below for example.

![Sample Label Image](image1)

![Sample Label Image](image2)
II. NOTTINGHAM ROTATOR CUFF PRODUCT SPECIFICATIONS

DEVICE COMPONENT SPECIFICATION

***
***
***

*** Material has been omitted pursuant to a request for confidential treatment.

8
Device Manufacture

***

***

*** Material has been omitted pursuant to a request for confidential treatment.

9
## Device Specification Forms

<table>
<thead>
<tr>
<th>Process</th>
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<tbody>
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<td>Requirement Specification</td>
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<td>Essential Requirement Checklist</td>
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<td>Component Specification Form</td>
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<td>Embroidery Specification Forms</td>
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## Manufacturing Process Records

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<tr>
<td>Shoulder Device Finishing</td>
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</tr>
<tr>
<td>Shoulder Device QC Inspection</td>
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<td>Implant Washing</td>
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<td>Implant Packing</td>
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<tr>
<td>Sterile Despatch</td>
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## Packing, Labeling and IFU Specifications

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<tr>
<th>Process</th>
<th>Reference</th>
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<tbody>
<tr>
<td>Packing</td>
<td>Double Tyvek pouches and white shelf box</td>
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<tr>
<td>Labels</td>
<td>See below for example</td>
</tr>
<tr>
<td>IFU</td>
<td>P003-PL-04a</td>
</tr>
</tbody>
</table>

*** Material has been omitted pursuant to a request for confidential treatment.
III. CERVICAL SPINE PRODUCT AND NOTTINGHAM ROTATOR CUFF PRODUCT - PACKAGING SPECIFICATIONS

A. General Information

1. All product labels for boxes and pouches will be printed in accordance with PLD WI 3 with reference to sample labels in the Sample Label File located in the Clean Room Office.

B. Procedure

1. Printing
   a. The Information on the label must include:
      i) The Lot number
      ii) The description
      iii) The size
      iv) The REF code
      v) The Expiry Date
      vi) The presence of the symbols for expiry date and single use only

2. Sealing
   a. Inner and outer peel pouches sealed in a clean room with a heat sealing machine set at ***C.

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*** Material has been omitted pursuant to a request for confidential treatment.

11
b. If required, mini label on film side of the inner pouch is placed such that the product itself is not obscured.

c. Sealed inner pouch is placed into an outer pouch such that the film sides are uppermost and the peel chevrons are at the same end.

d. Product label in the centre of the clear front of the outer pouch such that the product itself is not obscured.

3. Packing

a. Unless otherwise specified on the Order Receipt/Processing Record, a single double pouched and, and if applicable the instructions for use is packed, into each white shelf box

b. Product label is located on lid of the box

c. Irradiation indicator dot is placed on the product labels on the outer pouch and on the box lid.

d. The specified number of For Patients Notes product labels on a single length of backing strip are placed inside the box, which can then be closed. Note: The For Patients Notes product labels do not require irradiation dots.
e. Each shelf box is individually shrink-wrapped using the Minipack Synthesis 760 machine.
I. CERVICAL SPINE PRODUCT – PRICE AND BASE COST

As of the Effective Date, the price for the Cervical Spine Product shall be:

- US$***/unit for clinical use
- US$***/unit plus the cost of sterilization for use in testing
- US$***/unit for demonstration use

As of the Effective Date, the Base Cost for the Cervical Spine Product shall be US$***.

Notwithstanding the foregoing, in the event that the Cervical Spine Product patent (i.e., U.S. patent 6,093,205 or any patent that is of the same patent family) is invalidated in any jurisdiction without any further possibility of appeal, the parties shall renegotiate in good faith the pricing for Cervical Spine Products manufactured for distribution in such jurisdiction.

II. NOTTINGHAM ROTATOR CUFF PRODUCT – PRICE AND BASE COST

As of the Effective Date, the price for the Nottingham Rotator Cuff Product shall be:

- US$***/unit for clinical use
- US$***/unit plus the cost of sterilization for use in testing
- US$***/unit for demonstration use

As of the Effective Date, the Base Cost for the Nottingham Rotator Cuff Product shall be US$***.

III. PRICING FORMULA AND BASE COST FORMULA

Unless otherwise agreed by the parties, the Base Cost and the price for any Other Product, other than the Cervical Spine Product and the Nottingham Rotator Cuff Product, shall be set initially in accordance with the following Base Cost Formula and Price Formula:

\[
L = \text{Labor cost to Pearsalls for the Product} \\
O = \text{Overhead} = *** \times L \\
M = \text{Materials cost to Pearsalls for the Product}
\]

*** Material has been omitted pursuant to a request for confidential treatment.
Base Cost = ***
   = ***
P = Price to be paid to Pearsalls by NuVasive for the Product
P = Base Cost plus margin of ***% of final price
   ***
   ***
For example, if L= *** and M= *** then
Base Cost = ***
   ***

*** Material has been omitted pursuant to a request for confidential treatment.
For each Cervical Spine Product that is manufactured by an alternative supplier and for which Pearsalls is to receive a fee under the terms of Section 5.2, Pearsalls shall be paid US$ *** by NuVasive. Such fees shall be paid on a quarterly basis and accompanied by a reasonably detailed report specifying the number of Cervical Spine Products supplied to NuVasive during such period by an alternative supplier.

*** Material has been omitted pursuant to a request for confidential treatment.
QUALITY AGREEMENT

[To be agreed upon by the parties after the Effective Date, as provided in Section 1.27.]

E-1
EXHIBIT F
APPROVED SUPPLIERS

NuVasive hereby approves the following suppliers of components for Products:

- Biosil Limited, Global House, Isle of Man Business Park, Douglas, Isle of Man, British Isles
- AorTech International plc
NuVasive Acquires Cervical Nucleus-Like Replacement Device

- Offers First to Market Potential

- First Option Procedure Prior to Fusion or TDR

- Technology Allows Revision Procedures

San Diego, CA — August 4, 2005 — NuVasive, Inc. (NASDAQ: NUVA), a medical device company focused on developing products for minimally disruptive surgical treatments for the spine, announced today the acquisition of technology and assets from Pearsalls Limited, a privately-owned company based in the United Kingdom. Pearsalls is a subsidiary of AMI Holdings, Inc., a platform company of RoundTable Healthcare Partners.

The acquired assets include a cervical nucleus-like replacement device called Neodisc™. Neodisc offers NuVasive a first to U.S. market potential with a nucleus-like device designed to preserve motion in the cervical region of the spine and fills the gap between pre-surgical treatment and Total Disc Replacement (TDR) or spine fusion. The cervical motion preservation market has been forecasted to exceed $1 billion by 2011. NuVasive believes that Neodisc will be attractive for use in broad indications and pathologies because it is easily revisable and is intended to involve a relatively simple surgical placement procedure. The Company believes the potential to treat patients earlier in the degenerative cascade could make the Neodisc an attractive surgical option. Additionally, the technology is an excellent fit with NuVasive’s demonstrated focus on novel surgical access platforms designed for minimal tissue disruption upon implantation. NuVasive will seek FDA approval for commercialization of the Neodisc and anticipates filing an Investigational Device Exemption (IDE) application in the fourth quarter of 2005. The Company believes the Neodisc could be commercially available in Europe as early as 2007 and commercialized in the U.S. in the 2010 timeframe.
The transaction requires a closing payment by NuVasive of $12 million, including $5 million in cash and $7 million in stock. Terms of the transaction call for NuVasive to make additional payments upon the achievement of certain milestones leading to FDA approval that could total up to an additional $31.5 million in cash and stock. NuVasive will also pay a royalty of 5% on sales of the Neodisc product.

As part of the transaction, NuVasive also acquired all of Pearsalls’ intellectual property related to embroidery technology for use in surgical implants. The additional potential products are in early development stages.

Neodisc has undergone thorough pre-clinical study and limited clinical study in the form of a European pilot and has been implanted in a total of nine patients. These clinical studies have shown positive biointegration as well as full imaging compatibility. The product is an embroidered jacket with fixation flanges that encapsulates a silicone elastomer nucleus-like core that serves to safely replace a degenerative diseased cervical disc while maintaining full range of motion.

Dr. Scott Kitchel, Assistant Clinical Professor, Department Orthopedic Surgery, Oregon Health and Sciences University, commented, “I am very impressed with the product design and initial clinical results of the Neodisc. Neodisc’s viscoelastic materials provide shock absorption and qualify the Neodisc as a unique 2nd generation disc replacement over the 1st generation cervical TDRs under clinical study. I believe it may very well serve as a bridge to TDR by being applied earlier in the degenerative cascade treatment process.”

Alexis V. Lukianov, Chairman and Chief Executive Officer, said, “This acquisition is consistent with our strategy of developing or acquiring new technologies that we believe are superior to what is available in the market while maintaining momentum in training surgeons and enhancing our distribution network. Moving NuVasive into the cervical motion preservation market has been an important corporate objective. We believe this technology offers NuVasive a superior potential product. Having a product that is a first option device that preserves motion and can be fully revised to any other cervical procedure is a significant advancement in cervical spine surgery technology. It allows patients seeking treatment for a degenerated cervical disc to fill the gap between pre-surgical treatment and either spine fusion or TDR, providing us broader access to a cervical motion preservation market that has been forecasted to exceed $1 billion by 2011. We view this device, in concert with our Cerpass product for which we recently filed an IDE application, as a formidable one-two punch in the preservation of motion for the cervical spine.”

Kevin O’Boyle, Executive Vice President and Chief Financial Officer, said, “In accordance with GAAP, we will be expensing the initial $12 million acquisition payment as in-process research and development in the third quarter of 2005. Milestone payments leading up to FDA approval for Neodisc will be expensed similarly as they are paid. We expect that research and development expenses in 2006 will increase as we initiate U.S. clinical trials and prepare for the European launch of Neodisc in 2007. We are therefore revising our breakeven guidance from the first half of 2006 to the fourth quarter of 2006.”
Conference Call
NuVasive will hold a conference call on August 4, 2005 at 5:00 p.m. EDT / 2:00 p.m. PDT to discuss its acquisition of the cervical nucleus-like replacement device and related technology. The dial-in numbers are (877) 407-4018 for domestic callers, and (201) 689-8471 for international. A live Web cast of the conference call will be available online from the investor relations page of the Company’s corporate Web site at www.nuvasive.com.

Following the live Web cast, the call will remain available on NuVasive’s Web site, www.nuvasive.com, through August 25, 2005. In addition, a telephonic replay of the call will be available until August 25, 2005. The replay dial-in numbers are (877) 660-6853 for domestic callers and (201) 612-7415 for international callers. Please use account number 3055 and conference ID number 164249.

About NuVasive
NuVasive is a medical device company focused on the design, development and marketing of products for the surgical treatment of spine disorders. The Company’s product portfolio is focused on applications in the over $2 billion U.S. spine fusion market. The Company’s current principal product offering includes a minimally disruptive surgical platform called Maximum Access Surgery, or MAS™, as well as classic fusion implants.

The MAS platform offers advantages for both patients and surgeons such as reduced surgery and hospitalization time and faster recovery. MAS combines three categories of current product offerings—NeuroVision®, a proprietary software-driven nerve avoidance system; MaXcess®, a unique split-blade design retraction system; and specialized implants, like SpheRx™ and CoRoent™—that collectively minimize soft tissue disruption during spine surgery while allowing maximum visualization and surgical reproducibility. NuVasive’s classic fusion portfolio is comprised predominantly of proprietary saline packaged bone allografts and internal fixation products. NuVasive also has a robust R&D pipeline emphasizing both MAS and motion preservation products such as Total Disc Replacement (TDR).

NuVasive cautions you that statements included in this press release that are not a description of historical facts are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve risks, uncertainties, assumptions and other factors which, if they do not materialize or prove correct, could cause NuVasive’s results to differ materially from historical results or those expressed or implied by such forward-looking statements. All statements, other than statements of historical fact, are statements that could be deemed forward-looking statements. The potential risks and uncertainties that could cause actual growth and results to differ materially include, but are not limited to, risks that additional clinical experience may demonstrate that our products or proprietary procedures do not provide the intended safe and reproducible results; the rapidly changing and competitive nature of the medical device industry, including the risk that our competitors may develop products or technologies comparable or superior to ours (including the recently acquired technology described in this press release); NuVasive’s ability to convince surgeons to use its products; the ability of patients to obtain third-party reimbursement for surgical procedures employing NuVasive’s products; risks related to NuVasive’s ability to effectively manage the growth of its business and expansion of its product line; NuVasive’s
ability to successfully develop and commercialize new products and technologies; and other risks and uncertainties more fully described in NuVasive’s press releases and periodic filings with the Securities and Exchange Commission. NuVasive’s public filings with the Securities and Exchange Commission are available at www.sec.gov. NuVasive assumes no obligation to update any forward-looking statement to reflect events or circumstances arising after the date on which it was made.

# # #