

Form PTO-1595 (Rev. 10-08)  
OMB No. 0651-0027 (exp. 11/30/2008)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

## RECORDATION FORM COVER SHEET PATENTS ONLY

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

### 1. Name of conveying party(ies)

Fastenetix, LLC  
Third Millennium Engineering, LLC  
Techsys Medical Group, LLC

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

### 3. Nature of conveyance/Execution Date(s):

Execution Date(s) March 30 and April 3, 1998

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Joint Research Agreement  
☐ Government Interest Assignment  
☐ Executive Order 9424, Confirmatory License  
☒ Other Settlement and Assignment Agreement

### 2. Name and address of receiving party(ies)

Name: Spinal Concepts, Inc.

Internal Address: \_\_\_\_\_

Street Address: 5301 Riata Park Court, Bldg. F.

City: Austin

State: Texas

Country: US

Zip: 78727

Additional name(s) & address(es) attached? ☐ Yes ☒ No

### 4. Application or patent number(s):

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

09/261,977 (Attorney Docket No. ZIMM1960-4)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

### 5. Name and address to whom correspondence concerning document should be mailed:

Name: Sprinkle IP Law Group (Cust. No. 44654)

Internal Address: \_\_\_\_\_

Street Address: 1301 W. 25th Street, Suite 408

City: Austin

State: Texas

Zip: 78705

Phone Number: 512-637-9220

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

### 6. Total number of applications and patents involved: 1

### 7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00

- ☒ Authorized to be charged to deposit account  
☐ Enclosed  
☐ None required (government interest not affecting title)

### 8. Payment Information

Deposit Account Number 503183

Authorized User Name Katharina W. Schuster

### 9. Signature:

Katharina W. Schuster  
Signature

Dec. 19, 2008  
Date

Katharina W. Schuster, Reg. 50,000

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 34

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, V.A. 22313-1450

CH \$40.00 503183 09261977

**SETTLEMENT AND ASSIGNMENT AGREEMENT**

THIS AGREEMENT, is entered into by and between:

(a) Spinal Concepts, Inc., a corporation organized and existing under the laws of the state of Delaware and having a place of business located at 8200 Cameron Road, Suite B-160, Austin, Texas 78754 ("SCI"); and

(b) Fastenetix, LLC, a corporation organized and existing under the laws of the state of Delaware and having its principal place of business at 47 Maple Avenue, Suite L-28, Summit, New Jersey 07901, Third Millennium Engineering LLC, a limited liability company organized and existing under the laws of the state of Delaware and having its principal place of business at 47 Maple Avenue, Suite L-28, Summit, New Jersey 07901, TechSys Medical Group LLC, a limited liability company organized and existing under the laws of the state of Delaware and having its principal place of business at 47 Maple Avenue, Suite L-28, Summit, New Jersey 07901, James D. Ralph, an individual residing at 71 Manito Ave., Oakland, New Jersey 07436, Joseph P. Errico, an individual residing at 17 Morgan Ct., Bedminster, New Jersey 07921, and Thomas J. Errico, an individual residing at 5 Crest Acre Ct., Summit, New Jersey 07901 (Fastenetix, LLC, Third Millennium Engineering LLC, TechSys Medical Group LLC, James D. Ralph, Joseph P. Errico, and Thomas J. Errico are collectively referred to herein as "the Fastenetix Group").

(c) The Fastenetix Group and SCI are parties to this Agreement, and may be referred to as "the parties" or "each respective party."

(d) The effective date of this Agreement is April 1, 1998.

**BACKGROUND**

A. SCI is engaged in the development, design, manufacture, sale, and licensing of medical orthopedic hardware and devices.

B. The Fastenetix Group is engaged in the development, design and licensing of medical orthopedic hardware and devices.

ACCORDINGLY, in consideration of the mutual agreements stated in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, SCI and the Fastenetix Group agree as follows.

## AGREEMENT

### SECTION I. DEFINITIONS

1.1 "Claims" means all claims, demands, causes of action, suits, liabilities, obligations, losses, damages, costs and expenses of whatever kind or nature, known or unknown, whether in law or in equity, including, without limitation, causes of action for patent infringement, unfair competition, trade secret misappropriation, common law misappropriation and breach of contract.

1.2 "Confidential Information" means, subject to the limitations below, all trade secrets and confidential business information in any form or media (collectively, "information") that is disclosed by one party to the other party for the purposes of this Agreement or that may be developed by the parties pursuant to this Agreement. "Confidential Information" shall not include any information that: (a) was in the recipient party's possession before the receipt of the information from the disclosing party; (b) is or becomes a matter of public knowledge through no fault of the recipient party; (c) is rightfully received by the recipient party from a third party without a duty of confidentiality; (d) is disclosed by the disclosing party to a third party without a duty of confidentiality on the third party; or (e) is disclosed under operation of law, provided that the receiving party gives the disclosing party prior written notice of its legal obligation to disclose the information that is adequate to enable the disclosing party to seek to lawfully prohibit such disclosure. In addition, the parties agree that the term "Confidential Information" shall not include any information that is independently developed by the recipient party without using trade secrets and/or confidential information from the disclosing party.

1.3 "Fastenetix Technology" means all of the Fastenetix Group's processes, apparatus (including but not limited to prototypes), articles of manufacture, supplies and Technical Information directly relating to the following:

- (a) polyaxial pedicle screws having a cross-bar rod receiving and locking member, including the previous modification thereof so that it may be used with the existing SCI's lumbar fixation system;
- (b) polyaxial pedicle screws for use with a plating and/or offset rod assemblies;
- (c) variable spread angle cages; and
- (d) sliding shaft cross links.

1.4 "Fastenetix's Developments" means any improvements, enhancements or advances developed or acquired by any member of the Fastenetix Group for two (2) years after the effective date of this Agreement which are based on or derived from the Fastenetix Technology.

1.5 "Intellectual Property Rights" mean the intangible legal rights or interests, if protected by applicable laws, that exist now or in the future in (a) all patents, patent applications, trade secrets, confidential information, and know-how evidenced by or embodied in any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, (b) copyrights and any related rights evidenced by or embodied in any work of authorship, whether or not copyrightable, and (c) any other similar legal right or interest.

1.6 "SCI Technology" means SCI's BackFix and InFix technology which has been conceived of or embodied as of the effective date of this Agreement, and which is described in Exhibit A.

1.7 "SCI Polyaxial Application" means SCI's U.S. patent application serial no. 08/863,658 entitled "Polyaxial Spinal Fixation System And Method" filed on May 27, 1997, as such application exists as of the effective date of this Agreement.

1.8 "SCI's Developments" means any improvements, enhancements or advances developed or acquired by SCI for two (2) years after the effective date of this Agreement which are directly based on or directly derived from the SCI Technology.

1.9 "Technical Information" means all written specifications, manuals, drawings, charts, technical data, manufacturing information, documents and other works, available to any member of the Fastenetix Group, and created by or owned by any member of the Fastenetix Group, that are used in, describe or otherwise relate to the Fastenetix Technology.

## **SECTION II. DISCLOSURE, ASSIGNMENT, AND LICENSE**

2.1 Disclosures. The Fastenetix Group shall, within fourteen (14) days after the effective date of this Agreement, furnish and disclose to SCI all Fastenetix Technology, all Technical Information, and all Confidential Information related to the Fastenetix Technology that any member of the Fastenetix Group, or the agents thereof, possess or know. SCI shall, within fourteen (14) days after the effective date of this Agreement, furnish and disclose to Fastenetix, LLC, all Technical Information, and all Confidential Information related to the SCI Polyaxial Application that SCI, or the agents thereof, possess or know.

2.2 Assignment of Fastenetix's Intellectual Property Rights. The Fastenetix Group hereby assign to SCI, in perpetuity, all Intellectual Property Rights relating to or

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covering the Fastenetix Technology, including the entire right, title and interest for the United States and all foreign countries, in and to any and all improvements which are disclosed in the patents and patent applications described in Exhibit B, such patents and patent applications and all divisional, continuing, continuation-in-part, substitute, renewal, reissue, reexamination and all other patents and applications for patent which have been or shall be filed in the United States and all foreign countries on any of such improvements; all original, reexamined and reissued patents which have been or shall be issued in the United States and all foreign countries on such improvements; and specifically including the right to file foreign applications under the provisions of any convention or treaty and claim priority based on any applications filed in the United States. In conjunction therewith, the Fastenetix Group authorize all patent issuing authorities to issue any and all United States and foreign patents granted on such improvements to SCI.

**2.3 Assignment of SCI Polyaxial Application.** SCI hereby assigns to Fastenetix, LLC, in perpetuity, all Intellectual Property Rights covering the SCI Polyaxial Application, including the entire right, title and interest for the United States and all foreign countries, in and to any and all improvements which are disclosed in the SCI Polyaxial Application, and all divisional, continuing, substitute, renewal, reissue, reexamination and all other patents and applications for patent which have been or shall be issued in the United States and all foreign countries on such improvements; and specifically including the right to file foreign applications under the provisions of any convention or treaty and claim priority based on the SCI Polyaxial Application. In conjunction therewith, SCI authorizes all patent issuing authorities to issue any and all United States and foreign patents granted on such improvements to Fastenetix, LLC.

**2.4 Representations and Warranties.** The Fastenetix Group hereby represent and warrant that the disclosure made pursuant to Section 2.1 is complete and accurate with respect to all aspects of the Fastenetix Technology, and all Technical Information. The Fastenetix Group hereby represent and warrant that the patents and patent applications listed on Exhibit B attached hereto, constitute the full and complete list of all such patents and applications possessed or controlled by any member of the Fastenetix Group as of the effective date of this Agreement which relate to the Fastenetix Technology. The Fastenetix Group represent and warrant that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been or will be made to others by any member of the Fastenetix Group, and that the full right to convey the same as herein expressed is possessed by the Fastenetix Group. SCI hereby represents and warrants that the disclosure made pursuant to Section 2.1 is complete and accurate with respect to all aspects of the SCI Polyaxial Application. SCI hereby represents and warrants that the SCI Polyaxial Application constitutes the only patent and/or patent application possessed or controlled by SCI as of the effective date of this Agreement which relates to the SCI Polyaxial Application. SCI represents and warrants that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been or will be made to others by SCI, and that

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the full right to convey the same as herein expressed is possessed by SCI. The Fastenetix Group hereby represent and warrant that, as of the effective date of this Agreement, no member of the Fastenetix Group has conceived of or developed any improvements, enhancements, or advances of the SCI Technology which are not included in the Fastenetix Technology.

**2.5 Covenant Of Good Faith.** The Fastenetix Group covenant that, when requested and at the expense of SCI, to carry out in good faith the intent and purpose of this assignment, each member of the Fastenetix Group will execute all divisional, continuing, continuation-in-part, substitute, renewal, reissue, reexamination, and all other patent applications on any and all such improvements; execute all rightful oaths, declarations, assignments, powers of attorney and other papers; communicate to SCI all facts known to the Fastenetix Group relating to such improvements and the history thereof; and generally do everything possible which SCI shall reasonably consider desirable for securing, maintaining and enforcing proper patent protection for such improvements and for vesting title to such improvements in SCI. SCI covenants that, when requested and at the expense of Fastenetix, LLC, to carry out in good faith the intent and purpose of this assignment, SCI will execute all divisional, continuing, substitute, renewal, reissue, reexamination, and all other patent applications with respect to the SCI Polyaxial Application; execute all rightful oaths, declarations, assignments, powers of attorney and other papers; communicate to Fastenetix, LLC all facts known to SCI relating to the SCI Polyaxial Application and the history thereof; and generally do everything possible which Fastenetix, LLC shall reasonably consider desirable for securing, maintaining and enforcing proper patent protection for the SCI Polyaxial Application and for vesting title to the SCI Polyaxial Application in Fastenetix, LLC.

**2.6 Covenants Regarding Fastenetix Developments.** In the event that any member of the Fastenetix Group should develop any Fastenetix Developments, then the Fastenetix Group shall furnish and disclose to SCI all Fastenetix Developments within thirty (30) days after any Fastenetix Development is conceived of or developed by any member of the Fastenetix Group. All worldwide Intellectual Property Rights relating to or covering the Fastenetix Developments are hereby assigned to SCI. When requested and at the expense of SCI, to carry out in good faith the intent and purpose of this assignment, each the member of the Fastenetix Group will execute all rightful oaths, declarations, assignments, powers of attorney and other papers, and generally do everything possible which SCI shall reasonably consider desirable for securing, maintaining and enforcing proper patent protection for such Fastenetix Developments and for vesting title to such Fastenetix Developments in SCI.

**2.7 Exclusive License of Cervical Clamp Technology.** The Fastenetix Group have developed, and may develop, certain processes, apparatus (including but not limited to prototypes), articles of manufacture, supplies and Technical Information relating to cervical clamps having three degrees of freedom through a single locking mechanism (hereinafter referred to as the Cervical Clamp Technology). The Fastenetix Group

hereby grant to SCI an exclusive, world-wide, royalty-free, perpetual, fully transferable license, with the right to grant sublicenses, in and to all of the Fastenetix Group's Intellectual Property Rights relating to or covering the Cervical Clamp Technology, including all rights, titles and interests for the United States and all foreign countries, in and to any and all improvements which are disclosed in the patents and patent applications described in Exhibit C, such patents and patent applications and all divisional, continuing, continuation-in-part, substitute, renewal, reissue, reexamination and all other patents and applications for patent which have been or shall be issued or filed in the United States and all foreign countries on any of such improvements. The Fastenetix Group hereby represent and warrant that the patents and patent applications listed on Exhibit C attached hereto, constitute the full and complete list of all such patents and applications possessed or controlled by any member of the Fastenetix Group as of the effective date of this Agreement which relate to the Cervical Clamp Technology. With respect to patent prosecution, the parties agree that the Fastenetix Group shall prosecute all patent applications relating to the Cervical Clamp Technology at their discretion and cost, and the Fastenetix Group shall keep SCI informed of all developments associated with such patent prosecution. Notwithstanding the foregoing, SCI agrees to pay the reasonable costs incurred after the effective date of this Agreement relating to the prosecution of U.S. patents covering the Cervical Clamp Technology, however such payments shall only be made after such U.S. patents issue and only if SCI has approved of such costs in writing before such costs are incurred. The parties agree that SCI shall have the exclusive right, at its discretion, to defend, litigate, license, and enforce all Intellectual Property Rights that are exclusively licensed to SCI pursuant to this Section 2.7, and, as such, SCI may in its discretion use counsel of its choice to do so and SCI shall pay all costs incurred after the effective date of this Agreement associated therewith.

**2.8 Fastenetix Group Immunity From Suit.** SCI hereby grants the Fastenetix Group and its licensees a continuing, irrevocable, nonexclusive, immunity from any and all SCI claims originating from or relating to any acts or omissions that they may do, or fail to do, relating to making, having made, selling, offering for sale, using, and importing any apparatus, articles of manufacture, compositions, and processes disclosed in SCI's Polyaxial Application and any patent that may mature therefrom.

**2.9 SCI Immunity From Suit.** All members of the Fastenetix Group hereby grant SCI and SCI's customers and licensees a continuing, irrevocable, nonexclusive, immunity from any and all claims made by any member of the Fastenetix Group originating from or relating to (a) the assignment to SCI of the Fastenetix Group's Intellectual Property Rights (see Section 2.2 above) and the exclusive license to SCI of the Cervical Clamp Technology, and (b) any acts or omissions that SCI may do, or fail to do, relating to making, having made, selling, offering for sale, using, and importing any apparatus, articles of manufacture, compositions, and processes relating to the SCI Technology. The immunity provided for in this Section 2.9 shall also apply to the SCI Developments to the extent that any claim originates from or relates to technology

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developed by any member of the Fastenetix Group after the effective date of this Agreement. The immunity provided for in this Section 2.9 shall also apply to the SCI Developments to the extent that any claim originates from or relates to technology developed by any member of the Fastenetix Group before the effective date of this Agreement provided such technology has not, as of January 1, 1998, been assigned or exclusively licensed to a third party. For the purposes of the preceding sentence, SCI agrees that the patents listed in Exhibit D have been exclusively licensed by Fastenetix prior to January 1, 1998, and are therefore excluded from said immunity. In addition, all members of the Fastenetix Group agree and admit that the SCI Technology does not infringe, either literally or under the doctrine of equivalents, any claim in any of the patents listed in Exhibit D, or any claims in any patents that may mature from or claim priority to (a) any of the patent applications from which the patents listed in Exhibit D matured, (b) any patent applications from which priority is claimed in the patents listed in Exhibit D, and/or (c) any patents that may mature from a reexamination or reissue of any of the patents listed in Exhibit D. All members of the Fastenetix Group agree that all of the claims in all of the patents listed in Exhibit D include a polyaxial screw having a curvate head which seats inside a locking collar such as are shown in Figure 4 and 5 of U.S. Patent No. 5,690,630, and all members of the Fastenetix Group agree that any apparatus, article of manufacture, or method that does not include such a polyaxial screw, or that replaces such a polyaxial screw with a rod or bar, will not infringe, either literally or under the doctrine of equivalents, any claim in any of the patents listed in Exhibit D, or any claims in any patents that may mature from or claim priority to (a) any of the patent applications from which the patents listed in Exhibit D matured, (b) any patent applications from which priority is claimed in the patents listed in Exhibit D, and/or (c) any patents that may mature from a reexamination or reissue of any of the patents listed in Exhibit D.

**2.10 No Assistance.** SCI agrees to not voluntarily assist any third party in taking any action that SCI could not do because of the immunities granted by SCI in section 2.8 of this Agreement. All members of the Fastenetix Group agree to not voluntarily assist any third party in taking any action that any member of the Fastenetix Group could not do because of the immunities granted by the members of the Fastenetix Group in section 2.9 of this Agreement.

### **SECTION III. CONFIDENTIALITY AND SECURITY**

**3.1 Obligations of Confidence.** The Fastenetix Group agrees to maintain in strict confidence all Confidential Information directly relating to the Fastenetix Technology, the Fastenetix Developments, and the SCI Technology, and to prevent the unauthorized disclosure, dissemination and use of such Confidential Information to third parties. The Fastenetix Group agree to take all precautions necessary to insure the confidentiality of the Confidential Information as required by this Agreement. SCI agrees to maintain in strict confidence all Confidential Information directly relating to the SCI Polyaxial Application, and to prevent the unauthorized disclosure, dissemination

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and use of such Confidential Information to third parties. SCI agrees to take all precautions necessary to insure the confidentiality of the Confidential Information as required by this Agreement. The provisions of this Section 3.1 shall no longer apply once an item of Confidential Information is disclosed in a published patent application or issued patent.

#### SECTION IV. RELEASES

4.1 SCI hereby finally and fully releases, discharges and covenants not to sue the Fastenetix Group and their licensees for and from all Claims, whether known or unknown, which arose or accrued prior to the effective date of this Agreement that relate to the technology covered by the SCI Polyaxial Application.

4.2 All members of the Fastenetix Group hereby finally and fully releases, discharges and covenants not to sue SCI for and from all Claims, whether known or unknown, which arose or accrued prior to the effective date of this Agreement that relate to the SCI Technology or the technology covered by the SCI Polyaxial Application.

4.3 SCI agrees not to assert SCI's Polyaxial Application in an interference in the United States Patent and Trademark Office with regard to any pending or existent patent or patent application owned or controlled by the Fastenetix Group.

4.4 All immunities and releases, if any, provided for in sections 2.8, 2.9, 2.10, 4.1, 4.2, and 4.3 of this Agreement shall survive any breach of this Agreement.

#### SECTION V. ALTERNATIVE DISPUTE RESOLUTION

5.1 Non-binding Mediation. The parties shall attempt to have all disputes, controversies or claims between the parties arising under or related to this Agreement, including its breach, termination or validity, resolved by at least one day of mediation in Nashville, Tennessee before any other legal proceedings are initiated by either party. As such, the parties agree to select a mutually agreeable mediator, and to each bear one-half (1/2) of the mediator's fee for such services. If the parties cannot agree upon a mediator, then the parties agree to have the mediator appointed by the American Arbitration Association. A party may initiate such mediation by providing thirty (30) days written notice to the other party.

#### SECTION VI. MISCELLANEOUS

6.1 Assignments Royalty Free. The assignments and other rights granted herein are and shall be made on a royalty free basis.

6.2 Notices. Any and all notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing, by telecopy, or by

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mail, registered or certified, postage prepaid with return receipt requested. Notices shall be sent to the parties at their respective addresses set forth on the first page of this agreement; provided, however, that each party may change his address by written notice to the other party in accordance with this section. Notices delivered personally or telecopied shall be deemed given as of actual receipt, and mailed notices shall be deemed given as of seven (7) days after mailing.

6.3 Attorneys Fees; Injunctive Relief. In the event of a breach of this Agreement by one party resulting in damages to the other party, that other party may recover from the party breaching the Agreement any and all damages that may be sustained. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief, such as injunctive relief, to which that party may be entitled.

6.4 Severability. If any provision of this Agreement shall be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, that provision shall be deleted and the remainder of this Agreement shall remain in full force and effect. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be excessively broad as to duration, geographical scope, activity, or subject, then it shall be construed by limiting and reducing it so as to be enforceable to the extent compatible with the applicable law as it then appears.

6.5 Waiver; Remedies Cumulative. Waiver of any breach of this Agreement by either party shall be ineffective unless in writing signed by the party waiving compliance and shall not be considered a waiver of any other breach. All remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise.

6.6 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the parties. All previous representations and agreements, whether oral or written, regarding the subject matter of the agreement are merged in this Agreement. This Agreement may be modified only by a writing signed by the parties.

6.7 No Agency. The parties are independent contractors and nothing in this Agreement shall be construed to create an agency, joint venture, partnership, or other form of business association between the parties.

6.8 Choice of Law; Jurisdiction; Venue. The parties agree to the validity and interpretation of this Agreement and the legal relationship of the parties shall be governed by the laws of the state of Tennessee, U.S.A. Exclusive jurisdiction and venue for resolution of all disputes between the parties shall be in the courts located in

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Nashville, Tennessee, U.S.A., and the parties hereby agree to submit to the personal jurisdiction of such courts.

**6.9 Further Documents.** The Fastenetix Group agrees, without further consideration, to execute, acknowledge and deliver such further documents, instruments, applications, assignments, certificates, affidavits and other documents as SCI may reasonably require to effectuate the intent of this Agreement.

**6.10 Headings.** The headings in this Agreement are for purposes of reference only and shall not be construed a part of this Agreement.

**6.11 No Bias.** This Agreement shall be interpreted as written and negotiated jointly by the parties. It shall not be strictly construed against either party, regardless of the actual drafter of the Agreement.

The Agreement is executed as of the dates shown below, and shall be effective until as of the last date indicated.

IN WITNESS HEREOF, the parties have respectfully caused this Agreement to be executed by their duly authorized representative on the dates hereinafter indicated.

SCI:

Signature: 

Typed Name: Vincent J. Tannery

Title: President

Date: 4/3/98

STATE OF TEXAS

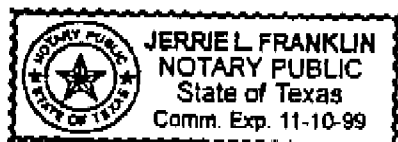
§

COUNTY OF TRAVIS

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§

BEFORE ME, the undersigned authority, on this 3<sup>rd</sup> day of April, 1998, personally appeared Vincent J. Tannery known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.



Jerrile L. Franklin  
Notary Public  
My Commission Expires: 11-10-99

Fastenetix, LLC:

Signature: Thomas TruopTyped Name: Thomas TruopTitle: ManagerDate: 3/30/98STATE OF New York §  
COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1998, personally appeared Thomas Truop, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Sandra Burke  
Notary Public  
My Commission Expires: 8/31/99

SANDRA BURKE  
Notary Public, State of New York  
No. 01804664384  
Qualified in Westchester County  
Commission Expires Aug. 31, 1999

Third Millennium Engineering, LLC:

Signature: Thomas E. EwingTyped Name: Thomas E. EwingTitle: ManagerDate: 3/30/99

STATE OF New York §  
 COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1999, personally appeared Thomas E. Ewing, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Sandra Burke  
 Notary Public  
 My Commission Expires: 8/31/99

SANDRA BURKE  
 Notary Public, State of New York  
 No. 01804694384  
 Qualified in Westchester County  
 Commission Expires Aug. 31, 1999

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TechSys Medical Group, LLC:

Signature: *Thomas E. ...*Typed Name: Thomas E. ...Title: ManagerDate: 3/30/99

STATE OF New York §  
 COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1999, personally appeared Thomas E. ..., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

SANDRA BURKE  
 Notary Public, State of New York  
 No. 01804694384  
 Qualified in Westchester County  
 Commission Expires Aug. 31, 1997

*Sandra Burke*  
 Notary Public  
 My Commission Expires 8/31/99

James D. Ralph:

Signature: *James D. Ralph*Date: 3/30/99

STATE OF New York §  
 COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1999, personally appeared James D. Ralph, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

*Sandra Burke*  
 Notary Public  
 My Commission Expires: 8/31/99

SANDRA BURKE  
 Notary Public, State of New York  
 No. 01804694384  
 Qualified in Westchester County  
 Commission Expires Aug. 31, 1997  
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Joseph P. Errico:

Signature: Date: 3/31/98

STATE OF New York §  
 COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1998, personally appeared Joseph P. Errico, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

SANDRA BURKE  
 Notary Public, State of New York  
 No. 018U4594734  
 Qualified in Westchester County  
 Commission Expires Aug 27, 1999

Sandra Burke  
 Notary Public  
 My Commission Expires: 8/31/99

Thomas J. Errico:

Signature: Date: 3/30/98

STATE OF New York §  
 COUNTY OF New York §

BEFORE ME, the undersigned authority, on this 30 day of March, 1998, personally appeared Thomas J. Errico, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Sandra Burke  
 Notary Public  
 My Commission Expires: 8/31/99

SANDRA BURKE  
 Notary Public, State of New York  
 No. 018U4594734  
 Qualified in Westchester County  
 Commission Expires Aug 27, 1999

**EXHIBIT A****DESCRIPTION OF SCI TECHNOLOGY**

SCI's Backfix technology means all of SCI's processes, apparatus (including but not limited to prototypes), articles of manufacture, supplies and Technical Information directly relating to (a) the subject matter depicted and/or described in the attached SCI product literature, and (b) the subject matter depicted and/or described in the following patent applications:

1. U.S. Patent Application Serial No. 08/740,123 entitled "Spinal Fixation System" and filed on October 24, 1996.
2. U.S. Patent Application Serial No. 08/942,325 entitled "Spinal Fixation System" and filed on October 1, 1997.
3. U.S. Patent Application entitled "Method and Apparatus for Spinal Fixation" and filed on February 20, 1998.

SCI's Infix technology means all of SCI's processes, apparatus (including but not limited to prototypes), articles of manufacture, supplies and Technical Information directly relating to the subject matter depicted and/or described in the following patent applications:

1. U.S. Patent Application Serial No. 08/847,172 entitled "Adjustable Height Fusion Device" and filed on May 1, 1997.
2. U.S. Patent Application entitled "Multi-Variable-Height Fusion Device" and filed on March 24, 1998.

# **The BacFix™**

## **Posterior Lower Back Fixation System**

### **Surgical Technique**

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The technique description herein is made available to the healthcare professional to illustrate the suggested treatment for the uncomplicated procedure. In the final analysis, the preferred treatment is that which addresses the needs of the specific patient.

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When used as a pedicle screw system, it is intended only for:

- patients having severe spondylolisthesis (Grades 3 and 4) of the fifth lumbar - first sacral (L5-S1) vertebral joint
- patients who are receiving fusions using autogenous bone graft only
- patients who are having the device fixed or attached to the lumbar and sacral spine
- patients who are having the device removed after the development of a solid fusion mass.

The screws of the BacFix system are not intended for insertion into the pedicles to facilitate spinal fusions above the L5-S1 vertebral joint. Benefit of spinal fusions utilizing any pedicle screw fixation system has not been adequately established in patients with stable spines. Potential risks identified with the use of this device system, which may require additional surgery, include: device component fracture, loss of fixation, non-union, fracture of the vertebra, neurological injury, and vascular or visceral injury.

After solid fusion occurs, these devices serve no functional purpose and should be removed. In most cases, removal is indicated because the implants are not intended to transfer or support forces developed during normal activities. Any decision to remove the device must be made by the physician and the patient, taking into consideration the patient's general medical condition and the potential risk to the patient of a second surgical procedure.

The use of posterior spinal instrumentation in children has been reported in the literature. Preferably, children should be above the age of 10 but need not have reached skeletal maturity. In special circumstances, implants may be used at younger ages.

## Patient Selection and Preoperative Planning

In selecting patients for internal fixation devices, the following factors can be of extreme importance to the success of the procedure and warrant careful consideration:

- weight
- occupation or activity level
- state of mental health
- degenerative disease status
- foreign body sensitivity
- smoker or non-smoker

Careful review of AP and lateral radiographs, as well as standing flexion/extension lateral radiographs is also critical to the success of the surgical procedure. Such films should provide an understanding as to which segments require fusion to be instrumented. The use of CT scans and MRI is also quite helpful in further determining the exact size and angulation of the involved pedicles. Pre-measuring of pedicle diameters and length of the vertebral bodies to be fused will assist in implant sizing.

**CONFIDENTIAL**

Spinal Concepts, Inc. The BacFix System

**PATENT**

**REEL: 022021 FRAME: 0659**

**EXHIBIT B****FASTENETIX PATENTS AND PATENT APPLICATIONS**

1. U.S. Patent Application Serial No. 08/549,977 entitled "A Sliding Shaft Variable Length Cross-Link Device For Use With Dual Rod Apparatus" and filed on October 30, 1995.
2. U.S. Patent Application Serial No. 08/772,407 entitled "A Side Mounted Polyaxial Pedicle Screw" and filed on December 23, 1996.
3. U.S. Patent Application Serial No. 08/856,773 entitled "A Polyaxial Pedicle Screw Having A Through Bar Clamp Locking Mechanism" and filed on May 15, 1997.
4. U.S. Patent Application Serial No. 08/880,810 entitled "A Polyaxial Pedicle Screw Having A Compression Locking Rod Gripping Mechanism" and filed on June 23, 1997.
5. U.S. Patent No. 5,653,763 entitled "Intervertebral Space Shape Conforming Cage Device" and issued on August 5, 1997.

**EXHIBIT C****CERVICAL CLAMP TECHNOLOGY PATENTS AND PATENT APPLICATIONS**

1. U.S. Patent No. 5,667,507 entitled "Compression Locking Variable Length Cross-Link Device For Use With Dual Rod Apparatus" and issued on September 16, 1997.
2. U.S. Patent No. 5,709,684 entitled "Advanced Compression Locking Variable Length Cross-Link Device" and issued on January 20, 1998.
3. PCT application serial number PCT/US96/18266 entitled A Variable Length and Angle Cross-link Device, filed November 13, 1996.

**EXHIBIT D**

1. U.S. Patent No. 5,690,630 entitled "Polyaxial Pedicle Screw" and issued on November 25, 1997.
2. U.S. Patent No. 5,669,911 entitled "Polyaxial Pedicle Screw" and issued on September 23, 1997.
3. U.S. Patent No. 5,725,588 entitled "Acetabular Cup Having Polyaxial Locking Screws" and issued on March 10, 1998.
4. U.S. Patent No. 5,647,873 entitled "Bicentric Polyaxial Locking Screw and Coupling Element" and issued on July 15, 1997.
5. U.S. Patent No. 5,520,690 entitled "Anterior Spinal Polyaxial Locking Screw Plate Assembly" and issued on May 28, 1996.
6. U.S. Patent No. 5,607,426 entitled "Threaded Polyaxial Locking Screw Plate Assembly" and issued on March 4, 1997.
7. U.S. Patent No. 5,531,746 entitled "Posterior Spinal Polyaxial Locking Lateral Mass Screw Plate Assembly" and issued on July 2, 1996.
8. U.S. Patent No. 5,643,265 entitled "Dynamic Compression Polyaxial Locking Screw Plate Assembly" and issued on July 1, 1997.