

**PATENT ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>		Acquisition
<b>CONVEYING PARTY DATA</b>		
<b>Name</b>		<b>Execution Date</b>
Link Spine Group, Inc		04/30/2003
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	DEPUY ACROMED , INC	
<b>Street Address:</b>	325 Paramount Drive	
<b>City:</b>	Raynham	
<b>State/Country:</b>	MASSACHUSETTS	
<b>Postal Code:</b>	02767	
<b>PROPERTY NUMBERS Total: 1</b>		
<b>Property Type</b>	<b>Number</b>	
Patent Number:	7387635	
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(617)310-9000	
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
<b>Phone:</b>	6174392000	
<b>Email:</b>	docket@nutter.com	
<b>Correspondent Name:</b>	Rory P. Pheiffer	
<b>Address Line 1:</b>	155 Seaport blvd.	
<b>Address Line 2:</b>	Nutter, McClennen & Fish, LLP	
<b>Address Line 4:</b>	Boston, MASSACHUSETTS 02210	
<b>ATTORNEY DOCKET NUMBER:</b>	101896-1078	
<b>NAME OF SUBMITTER:</b>	Rory P. Pheiffer	
<b>Total Attachments: 89</b> source=Acquisition#page1.tif source=Acquisition#page2.tif source=Acquisition#page3.tif source=Acquisition#page4.tif		

OP \$40.00 7387635

**501025088**

**PATENT  
 REEL: 023565 FRAME: 0683**

source=Acquisition#page5.tif  
source=Acquisition#page6.tif  
source=Acquisition#page7.tif  
source=Acquisition#page8.tif  
source=Acquisition#page9.tif  
source=Acquisition#page10.tif  
source=Acquisition#page11.tif  
source=Acquisition#page12.tif  
source=Acquisition#page13.tif  
source=Acquisition#page14.tif  
source=Acquisition#page15.tif  
source=Acquisition#page16.tif  
source=Acquisition#page17.tif  
source=Acquisition#page18.tif  
source=Acquisition#page19.tif  
source=Acquisition#page20.tif  
source=Acquisition#page21.tif  
source=Acquisition#page22.tif  
source=Acquisition#page23.tif  
source=Acquisition#page24.tif  
source=Acquisition#page25.tif  
source=Acquisition#page26.tif  
source=Acquisition#page27.tif  
source=Acquisition#page28.tif  
source=Acquisition#page29.tif  
source=Acquisition#page30.tif  
source=Acquisition#page31.tif  
source=Acquisition#page32.tif  
source=Acquisition#page33.tif  
source=Acquisition#page34.tif  
source=Acquisition#page35.tif  
source=Acquisition#page36.tif  
source=Acquisition#page37.tif  
source=Acquisition#page38.tif  
source=Acquisition#page39.tif  
source=Acquisition#page40.tif  
source=Acquisition#page41.tif  
source=Acquisition#page42.tif  
source=Acquisition#page43.tif  
source=Acquisition#page44.tif  
source=Acquisition#page45.tif  
source=Acquisition#page46.tif  
source=Acquisition#page47.tif  
source=Acquisition#page48.tif  
source=Acquisition#page49.tif  
source=Acquisition#page50.tif  
source=Acquisition#page51.tif  
source=Acquisition#page52.tif  
source=Acquisition#page53.tif  
source=Acquisition#page54.tif  
source=Acquisition#page55.tif  
source=Acquisition#page56.tif  
source=Acquisition#page57.tif  
source=Acquisition#page58.tif  
source=Acquisition#page59.tif

source=Acquisition#page60.tif  
source=Acquisition#page61.tif  
source=Acquisition#page62.tif  
source=Acquisition#page63.tif  
source=Acquisition#page64.tif  
source=Acquisition#page65.tif  
source=Acquisition#page66.tif  
source=Acquisition#page67.tif  
source=Acquisition#page68.tif  
source=Acquisition#page69.tif  
source=Acquisition#page70.tif  
source=Acquisition#page71.tif  
source=Acquisition#page72.tif  
source=Acquisition#page73.tif  
source=Acquisition#page74.tif  
source=Acquisition#page75.tif  
source=Acquisition#page76.tif  
source=Acquisition#page77.tif  
source=Acquisition#page78.tif  
source=Acquisition#page79.tif  
source=Acquisition#page80.tif  
source=Acquisition#page81.tif  
source=Acquisition#page82.tif  
source=Acquisition#page83.tif  
source=Acquisition#page84.tif  
source=Acquisition#page85.tif  
source=Acquisition#page86.tif  
source=Acquisition#page87.tif  
source=Acquisition#page88.tif  
source=Acquisition#page89.tif

---

STOCK PURCHASE AGREEMENT

among

DEPUY ACROMED, INC., on the one hand

and

HELMUT D. LINK

and

THE STOCKHOLDERS AND OPTIONHOLDERS OF LINK SPINE GROUP, INC.  
PARTY HERETO, on the other hand

Dated as of April 30, 2003

---

**TABLE OF CONTENTS**

	<b>Page</b>
SCHEDULES AND EXHIBITS: .....	iv
ARTICLE I Defined Terms .....	1
1.01. Defined Terms .....	1
1.02. Accounting Terms.....	10
1.03. Other Rules of Construction .....	10
ARTICLE II Purchase and Sale.....	10
2.01. Purchase and Sale .....	10
2.02. Closing Date Purchase Price; Payments .....	11
2.03. The Closing.....	12
2.04. Additional Contingent Payments .....	12
2.05. Further Assurances.....	16
ARTICLE III Representations and Warranties Relating to Sellers .....	16
3.01. Authorization .....	16
3.02. Non-Contravention .....	17
3.03. Consents and Approvals .....	17
3.04. Title to Shares .....	17
ARTICLE IV Representations and Warranties Relating to the Company .....	18
4.01. Organization and Qualification of the Company; Non-Contravention.....	18
4.02. Capital Stock of the Company .....	18
4.03. Consents and Approvals .....	19
4.04. Other Equity Interests .....	19
4.05. Financial Statements; No Undisclosed Liabilities .....	19
4.06. Absence of Certain Changes and Actions.....	20
4.07. Real Property .....	20
4.08. Personal Property.....	20
4.09. Intellectual Property Rights .....	21
4.10. Litigation.....	23
4.11. Contracts .....	23
4.12. Certain Employees.....	24
4.13. Benefit Plans; No Excess Parachute Payments.....	24
4.14. Taxes .....	26
4.15. Environmental.....	27
4.16. Business Insurance.....	28
4.17. Warranties; Product Liability; Product Liability Insurance.....	28
4.18. Status of Device.....	29
4.19. Compliance with Laws .....	29
4.20. Transactions with Affiliates.....	29
4.21. Medical Device Regulation.....	29
4.22. Brokers' Fees; Payments to Others.....	31
4.23. Accounts; Powers of Attorney; Officers and Directors .....	31

ARTICLE V Representations and Warranties Relating to LHC .....	31
5.01. Organization and Qualification of LHC; Non-Contravention .....	31
5.02. Capital Stock of LHC.....	32
5.03. Consents and Approvals .....	33
5.04. Title; Other Equity Interests.....	33
5.05. Financial Statements; No Undisclosed Liabilities .....	33
5.06. Taxes .....	33
5.07. Insurance.....	35
5.08. Distribution Agreements.....	35
5.09. Powers of Attorney and Custody Agreements.....	35
ARTICLE VI Representations and Warranties of purchaser.....	36
6.01. Organization.....	36
6.02. Authorization .....	36
6.03. Non-Contravention .....	36
6.04. Consents and Approvals .....	36
6.05. Available Funds .....	37
6.06. No Legal Proceedings.....	37
6.07. Securities Act of 1933.....	37
6.08. Investigation; No Additional Representations; No Reliance, etc. ....	37
6.09. Brokers' Fees .....	37
ARTICLE VII Further Covenants and Agreements .....	37
7.01. Conduct of Business of LHC and the Company.....	37
7.02. Access; Information; Confidentiality.....	41
7.03. Efforts; Consents and Conditions to Closing.....	41
7.04. Notification of Certain Matters.....	42
7.05. Agreement Regarding Link Name.....	42
7.06. Non-Competition .....	43
7.07. Insurance.....	44
7.08. Resignations.....	44
7.09. Exclusivity .....	44
7.10. Tax Matters .....	45
7.11. Additional Agreements .....	46
7.12. Records .....	46
7.13. Exercise of the Options.....	46
7.14. Payment of Deal Payment Obligations.....	46
7.15. Matters Relating to the PMA Application .....	47
7.16. Matters Relating to the Clinical Study and IDE .....	47
7.17. Matters Relating to the CE-Mark.....	47
7.18. Payment to Professor Schellnack.....	47
7.19. Further Covenants of HDL .....	47
7.20. Hold Harmless Agreement.....	47
ARTICLE VIII Conditions Precedent to Obligations of Purchaser.....	48
8.01. Performance by Sellers .....	48
8.02. Representations and Warranties.....	48

	Page
8.03. No Injunctions; Litigation.....	48
8.04. Governmental Approvals.....	48
8.05. Sellers' Certificate.....	49
8.06. Closing Deliveries.....	49
8.07. Release of Liens.....	49
8.08. Certain Contracts.....	49
8.09. No Material Adverse Effect; Pending Temporary Clinical Study Matters.....	49
8.10. Exercise of Options.....	49
<b>ARTICLE IX Conditions Precedent to Obligations of Sellers.....</b>	<b>49</b>
9.01. Performance by Purchaser.....	50
9.02. Representations and Warranties.....	50
9.03. No Injunctions.....	50
9.04. Governmental Approvals.....	50
9.05. Officer's Certificate.....	50
9.06. Closing Deliveries.....	50
<b>ARTICLE X Closing Deliveries.....</b>	<b>50</b>
10.01. Closing Deliveries by the Company Stockholders.....	50
10.02. Closing Deliveries by HDL.....	51
10.03. Closing Deliveries by Purchaser.....	52
<b>ARTICLE XI Survival and Indemnification.....</b>	<b>52</b>
11.01. Survival.....	52
11.02. Sellers' Indemnification.....	53
11.03. Purchaser's Indemnification.....	55
11.04. Limitations on Sellers' Indemnification.....	56
11.05. Limitations on Purchaser Indemnification.....	57
11.06. Indemnification Procedures.....	58
11.07. Limitation on Remedies.....	59
11.08. Purchase Price Adjustment.....	60
11.09. Tax Indemnification.....	60
11.10. No Right of Contribution.....	64
11.11. Right of Set-Off.....	64
<b>ARTICLE XII Termination.....</b>	<b>64</b>
12.01. Termination of Agreement.....	64
12.02. Effect of Termination.....	64
<b>ARTICLE XIII Miscellaneous.....</b>	<b>65</b>
13.01. Expenses.....	65
13.02. Waiver of Compliance; Consents.....	65
13.03. Preservation of Records.....	65
13.04. Amendments and Waivers.....	65
13.05. Transferability.....	66
13.06. Notices.....	66
13.07. Governing Law.....	67

	<b>Page</b>
13.08. Severability .....	67
13.09. Section Headings .....	67
13.10. Disclosure .....	67
13.11. Counterparts.....	68
13.12. Entire Agreement.....	68
13.13. Publicity; Confidentiality.....	68
13.14. Parties in Interest.....	68
13.15. Dispute Resolution.....	68
13.16. Mediation.....	70
13.17. Seller Representative .....	71

**SCHEDULES AND EXHIBITS:**

- Schedule I    Company Stockholders and Optionholders
- Schedule II    Percentage Interests and Deal Payment Obligations
  
- Exhibit A    Form of Escrow Agreement
- Exhibit B    Form of Transition Services Agreement
- Exhibit C-1    Form of Management Release Agreements
- Exhibit C-2    Form of HDL Release Agreement



**INDEX OF DEFINED TERMS**

<u>1997 Contract</u> .....	22	<u>DERU</u> .....	6
<u>1997 Patent Rights</u> .....	22	<u>Device</u> .....	4
<u>Additional Contingent Payment</u> .....	13	<u>Dollars</u> .....	4
<u>Affiliate</u> .....	1	<u>DOT Assignment</u> .....	4
<u>Amended and Restated Hold Harmless Agreement</u> .....	49	<u>Employee Benefit Plan</u> .....	4
<u>Appeal Arbitrator</u> .....	73	<u>Employee Pension Benefit Plan</u> .....	4
<u>Applicable Accounting Principles</u> .....	1	<u>Employee Welfare Benefit Plan</u> .....	4
<u>Appraisal Statement</u> .....	65	<u>Encumbrances</u> .....	4
<u>Appraiser</u> .....	65	<u>Environmental Requirements</u> .....	4
<u>Available Amount</u> .....	59	<u>ERISA</u> .....	4
<u>Benefit Agreement</u> .....	1	<u>ERISA Affiliate</u> .....	26
<u>Business Day</u> .....	2	<u>Escrow Agent</u> .....	4
<u>Büttner-Januz 2002 Contract</u> .....	22	<u>Escrow Agreement</u> .....	4
<u>Calendar Year</u> .....	2	<u>Escrow Fund</u> .....	11
<u>Clarification Agreement</u> .....	2	<u>Expiration Date</u> .....	67
<u>Clinical Study</u> .....	2	<u>FDA</u> .....	4
<u>Closing</u> .....	12	<u>FDA Approval</u> .....	4
<u>Closing Date</u> .....	12	<u>FDA Approval Amount</u> .....	12
<u>Closing Date Deal Payment Obligations</u> ....	2	<u>FDA Approval Date Deal Payment Obligations</u> .....	5
<u>Closing Date Purchase Price</u> .....	11	<u>FDA Restriction Deduction</u> .....	13
<u>Code</u> .....	2	<u>FDCA</u> .....	5
<u>Common Stock</u> .....	1	<u>Final Appraiser</u> .....	66
<u>Company</u> .....	1	<u>Final Report</u> .....	14
<u>Company Audited Balance Sheet</u> .....	20	<u>Final Valuation Date</u> .....	65
<u>Company Audited Financial Statements</u> ...	20	<u>GCP</u> .....	30
<u>Company Closing Date Debt Obligation Amount</u> .....	11	<u>GLP</u> .....	30
<u>Company Representations</u> .....	55	<u>Governmental Entity</u> .....	5
<u>Company Shares</u> .....	11	<u>Hazardous Material</u> .....	5
<u>Company Stockholders</u> .....	1	<u>HDL</u> .....	1
<u>Company Tax Group</u> .....	27	<u>Hold Harmless Agreement</u> .....	5
<u>Competitive Enterprise</u> .....	2	<u>HSR Act</u> .....	5
<u>Competitive Product</u> .....	2	<u>IDE</u> .....	5
<u>Confidentiality Agreement</u> .....	42	<u>Indemnified Party</u> .....	61
<u>Contingent Deal Payment Obligations</u> .....	2	<u>Indemnifying Party</u> .....	61
<u>Contract</u> .....	2	<u>Intellectual Property Rights</u> .....	5
<u>CPR</u> .....	72	<u>IRB</u> .....	30
<u>Deal Payment Obligations</u> .....	2	<u>LHC</u> .....	1
<u>Debt Obligation</u> .....	3	<u>LHC Audited Balance Sheet</u> .....	34
<u>Debt Obligation Amounts</u> .....	3	<u>LHC Audited Financial Statements</u> .....	34
<u>Declarations</u> .....	3	<u>LHC Closing Date Debt Obligation Amount</u> .....	11
<u>Deductible</u> .....	59	<u>LHC Entity</u> .....	34

<u>LHC Representations</u> .....	55
<u>LHC Shares</u> .....	10
<u>LHC Tax Group</u> .....	34
<u>Link Orthopaedics</u> .....	6
<u>Link Orthopaedics Disposition</u> .....	6
<u>Link Orthopaedics Letter Agreement</u> .....	6
<u>Link Orthopaedics Tax Liability</u> .....	66
<u>Link Orthopaedics Value</u> .....	65
<u>Loss</u> .....	6
<u>Material Adverse Effect</u> .....	7
<u>Medical Devices Directive</u> .....	7
<u>Modified Device</u> .....	7
<u>Net Sales of the Device</u> .....	7
<u>Neutral Auditor</u> .....	14
<u>Non-Compete Payment</u> .....	11
<u>Notice</u> .....	14
<u>Notified Body</u> .....	7
<u>Option Letters</u> .....	8
<u>Option Shares</u> .....	8
<u>Optionholder</u> .....	7
<u>Options</u> .....	8
<u>Patents</u> .....	8
<u>Percentage Interest</u> .....	11
<u>Permitted Encumbrances</u> .....	8
<u>Person</u> .....	8
<u>PMA Application</u> .....	8
<u>Post-Closing Tax Period</u> .....	8
<u>Post-Closing Tax Return</u> .....	46
<u>Powers of Attorney</u> .....	36
<u>Pre-Closing Tax Period</u> .....	8
<u>Pre-Closing Tax Return</u> .....	46
<u>Product Liability Insurance Policy</u> .....	29
<u>Property Taxes</u> .....	64
<u>Purchaser</u> .....	1

<u>Purchaser Indemnitees</u> .....	56
<u>Purchaser Representations</u> .....	55
<u>Purchaser Representatives</u> .....	42
<u>OSR</u> .....	30
<u>Qualified Contractor Agreement</u> .....	8
<u>Qualified Contractor Assignment</u> .....	8
<u>Real Property</u> .....	21
<u>Revenue Allocation Letter</u> .....	8
<u>Schellnack 2002 Contract</u> .....	22
<u>Seller Indemnitees</u> .....	9
<u>Seller Representative</u> .....	9
<u>Sellers</u> .....	1
<u>Seller-Specific Representations</u> .....	55
<u>Shares</u> .....	11
<u>Stock Option Plan</u> .....	9
<u>Stockholder Payments</u> .....	11
<u>Stockholders Agreement</u> .....	9
<u>Straddle Period</u> .....	63
<u>Subsidiary</u> .....	9
<u>Supply Agreement</u> .....	9
<u>Tax Claim</u> .....	64
<u>Tax Claim Notice</u> .....	64
<u>Tax Indemnifying Party</u> .....	9
<u>Tax Returns</u> .....	9
<u>Taxes</u> .....	9
<u>Third Party Claim</u> .....	61
<u>Total Purchase Price</u> .....	9
<u>Trademarks</u> .....	10
<u>Transaction Documents</u> .....	10
<u>Transaction Expenses</u> .....	10
<u>Transfer Taxes</u> .....	47
<u>Transition Services Agreement</u> .....	47
<u>Waldemar</u> .....	2

STOCK PURCHASE AGREEMENT, dated as of April 30, 2003, by and among DEPUY ACROMED, INC., an Ohio corporation ("Purchaser"), on the one hand, and HELMUT D. LINK ("HDL") and the individuals listed on Schedule I attached hereto (collectively, the "Company Stockholders" and, together with HDL, "Sellers"), on the other hand.

WHEREAS, HDL owns [REDACTED] shares of common stock, par value [REDACTED] per share of Link Holding Company, Inc., a Delaware corporation ("LHC"), representing 100% of the issued and outstanding shares of capital stock of LHC;

WHEREAS, LHC and the Company Stockholders own such number of shares of common stock, par value [REDACTED] per share (the "Common Stock"), of Link Spine Group, Inc., a Delaware corporation (the "Company"); and options to purchase shares of Common Stock set forth in Schedule I attached hereto;

WHEREAS, LHC and the Company Stockholders collectively own 100% of the issued and outstanding shares of Common Stock and of the options and other rights to purchase shares of Common Stock; and

WHEREAS, Sellers desire to sell to Purchaser, and Purchaser desires to purchase from Sellers, (i) all the issued and outstanding shares of capital stock of LHC and (ii) all of the Common Stock owned by the Company Stockholders, including the Company Stock that would be owned by the Company Stockholders after giving effect to the exercise of all options to purchase shares of Common Stock (which, together, provide for the sale, directly (in the case of LHC) and directly and indirectly (in the case of the Company), of 100% of the issued and outstanding shares of capital stock of LHC and the Company), upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the respective agreements hereinafter set forth, the parties hereto agree as follows:

## ARTICLE I

### DEFINED TERMS

1.01. Defined Terms. The following terms, not defined elsewhere in this Agreement, shall have the following meanings:

"Affiliate" shall mean, as to the party specified, any Person which directly or indirectly controls, is controlled by or is under common control with, such party. The term "control" shall mean the power to direct the affairs of such Person by reason of ownership of voting stock or other equity interests, by contract or otherwise.

"Applicable Accounting Principles" shall mean United States generally accepted accounting principles, consistently applied with the Company Audited Financial Statements in accordance with past practices.

"Benefit Agreement" means any employment, deferred compensation, severance, termination, employee benefit, loan, indemnification, stock repurchase, consulting or similar

agreement between the Company and any former or current director, officer, employee, independent contractor, distributor or consultant of the Company, or any agreement between the Company and any former or current director, officer, employee, independent contractor or consultant of the Company, the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company of the nature contemplated by this Agreement.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in New York City.

“Calendar Year” shall mean, for any year, the year beginning January 1 and ending on December 31.

“Clarification Agreement” shall mean that certain clarification agreement entered into as of April 15, 2003, by and between Waldemar Link GmbH & Co. KG (“Waldemar”) and the Company, to clarify and document certain agreements between such parties.

“Clinical Study” shall mean all clinical studies performed in the United States pursuant to the IDE (in respect of the first 375 subjects). The term “Clinical Study” shall include the randomized and non-randomized phases of the original IDE study (which involved 71 nonrandomized and 304 randomized subjects), but not the continued access phase thereof.

“Closing Date Deal Payment Obligations” shall mean the aggregate of the amounts set forth in Column A of Schedule II attached hereto.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Competitive Enterprise” shall mean any business enterprise that (i) engages in the design, development, marketing or sale of a Competitive Product or (ii) holds a 10% or greater equity, voting or profit participation interest in any business enterprise that engages in the design, development, marketing or sale of a Competitive Product.

“Competitive Product” shall mean any product that both (x) competes anywhere in the world with the Device, including as it may be further developed, and (y) is designed or marketed as a non-biological, non-fusion total disc replacement for the lumbar region of the spine.

“Contingent Deal Payment Obligations” shall mean the aggregate of the amounts calculated as set forth in Column C of Schedule II attached hereto.

“Contract” shall mean any note, bond, mortgage, indenture, deed of trust, lease, rental agreement, insurance policy, sales order, license, agreement, permit, purchase order, commitment and any other contract or binding arrangement.

“Deal Payment Obligations” shall mean the sum of the Closing Date Deal Payment Obligations, the FDA Approval Date Deal Payment Obligations and the Contingent Deal Payment Obligations.

“Declarations” shall mean the collective reference to those certain declarations, dated as of the date hereof, made by [REDACTED] and [REDACTED].

“Debt Obligation” shall mean, with respect to any Person as of any date, an amount equal to the sum, without duplication, of (i) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (vi) all Debt Obligations of others secured by (or for which the holder of such Debt Obligation has an existing right, contingent or otherwise, to be secured by) any claim on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vii) all guarantees by such Person of Debt Obligations of others, (viii) all capital lease obligations of such Person, (ix) all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements, (x) all obligations of such Person as an account party in respect of letters of credit and banker’s acceptances, (xi) all obligations of such Person consisting of overdrafts (e.g., cash float reflected as a net negative on the cash line), (xii) all obligations of such Person pursuant to any deferred compensation agreements and (xiii) all accounts payable by such Person to any other Person (other than an Affiliate of such first Person) which were invoiced more than ninety (90) days from such date. Without limiting the foregoing, “Debt Obligation” shall include, (A) with respect to the Company, (1) the outstanding principal amount of, and accrued and unpaid interest on, the obligations of the Company (along with all fees or other amounts owing) incurred pursuant to that certain Senior Secured Line of Credit issued to the Company by HDL, dated December 17, 1999 (as amended on April 1, 2001, February 1, 2002 and October 1, 2002) and (2) the aggregate amount of accounts payable to, net of any accounts receivable from, Affiliates of the Company (other than LHC), other than such accounts payable which were invoiced by any such Affiliate less than forty-five (45) days from such date (unless such invoice is for services rendered or goods sold on or before the forty-fifth day preceding the date of determination) and (B) with respect to LHC, the aggregate amount of accounts payable to, net of any accounts receivable from, Affiliates of LHC (other than the Company), other than such accounts payable which were invoiced by any such Affiliate less than forty-five (45) days from such date (unless such invoice is for services rendered or goods sold on or before the forty-fifth day preceding the date of determination). Notwithstanding anything to the contrary contained in the foregoing, the following shall not be considered a “Debt Obligation”: (I) accounts payable to any Person other than an Affiliate of LHC or the Company, except as provided in clause (xiii) above; (II) accounts payable to any Affiliate of LHC, except as provided in clause (B) above or accounts payable to any Affiliate of the Company, except as provided in clause (A)(2) above; (III) any amounts payable under the employment agreements with [REDACTED], [REDACTED] or [REDACTED] set forth in Schedule 4.11; and (IV) the Deal Payment Obligations and the Transaction Expenses.

“Debt Obligation Amounts” shall mean the collective reference to the LHC Closing Date Debt Obligation and the Company Closing Date Debt Obligation.

“Device” shall mean the SB Charité III Intervertebral Dynamic Disc Spacer (a/k/a the SB Charité Artificial Disc), with or without bioactive coating.

“Dollars” and “\$” shall mean, unless otherwise specified, United States Dollars.

“DOT Assignment” shall mean that certain assignment and assumption agreement, dated as of April 10, 2003, by and between Waldemar and the Company, to assign that certain Vertrag (Agreement) dated October 10, 2002, with DOT GmbH, a German corporation, to the Company.

“Employee Benefit Plan” shall mean any “employee benefit plan” (as such term is defined in ERISA §3(3)) and any other agreement, policy or arrangement pursuant to which any employee is entitled to receive benefits or payments from the Company that are not covered by ERISA §§ 3(1), 3(2) or 3(3), and which, individually or in the aggregate, would involve cost or expense that is material to LHC or the Company.

“Employee Pension Benefit Plan” shall have the meaning set forth in ERISA §3(2).

“Employee Welfare Benefit Plan” shall have the meaning set forth in ERISA §3(1).

“Encumbrances” shall mean, to the extent applicable, all liens (including liens for Taxes), mortgages, security interests, leases, options, charges, rights of first refusal or first offer, easements or other similar encumbrances.

“Environmental Requirements” shall mean all federal, state, local, and foreign statutes, regulations, and ordinances concerning pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Materials, substances or wastes, in each case as amended and now in effect.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” shall have the meaning ascribed to it in the Escrow Agreement.

“Escrow Agreement” shall mean the escrow agreement to be entered into as of the Closing among Purchaser, the Seller Representative and the Escrow Agent in substantially the form attached hereto as Exhibit A.

“FDA” shall mean the United States Food and Drug Administration.

“FDA Approval” shall mean approval by the FDA of a PMA Application allowing for commercial distribution of the Device (without bioactive coating) in the United States without any material restrictions (other than those provided for in the PMA Application) on the number of surgeons, physicians, hospitals or other similar authorized buying groups to

whom the Device (without bioactive coating) may be sold or the number of sites where the Device (without bioactive coating) may be marketed or sold. For the purposes of determining what constitutes a "material restriction" in the foregoing sentence, it is hereby understood and agreed that any (x) requirements relating to a post-approval follow-up clinical study or (y) conditions, requirements or restrictions relating to training in connection with the use of the Device, shall not itself be deemed a "material restriction".

"FDA Approval Date Deal Payment Obligations" shall mean the aggregate of the amounts set forth or calculated as set forth, as the case may be, in Column B of Schedule II attached hereto.

"FDCA" shall mean the United States Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

"Governmental Entity" shall mean any Federal, state, local or foreign government or any court of competent jurisdiction, administrative agency or commission or other governmental entity or instrumentality, domestic or foreign.

"Hazardous Material" shall mean any substance, material or waste which is regulated by or forms the basis of liability under any Environmental Requirements, including (a) any material or substance which is defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Requirements, (b) polychlorinated biphenyls (PCB's) or (c) any radioactive substance.

"Hold Harmless Agreement" shall mean that certain agreement, dated as of January 19, 2000, by and between Waldemar and the Company.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

"IDE" shall mean the approved investigational device exemption issued by the FDA authorizing the Company to evaluate the safety and efficacy of the Device (without bioactive coating) for use in the treatment of single-level lumbar degenerative disc disease covering the original study of 71 nonrandomized and 304 randomized subjects and the continued access phase approved for enrollment of up to a total of 300 additional subjects.

"Intellectual Property Rights" shall mean all Patents, copyrights (and other rights in connection therewith, including the right to file applications for statutory protections) and Trademarks, trade secrets, processes, discoveries, structures, inventions, designs, ideas, domain names, works of authorship, copyrightable works, trade dresses, service marks, formulas, data, know-how, show-how, improvements, inventions, product concepts, techniques, information or statistics contained in, or relating to, marketing plans, strategies, forecasts, blueprints, sketches, records, notes, devices, drawings, shop drawings, customer lists, patent applications, continuation applications, continuation-in-part applications, file wrapper continuation applications and divisional applications.

"Link Orthopaedics" shall mean Link America, Inc. (d/b/a Link Orthopaedics), a New Jersey corporation.

"Link Orthopaedics Disposition" shall mean the sale of Link Orthopaedics by LHC to DERU GmbH ("DERU") pursuant to the Link Orthopaedics Letter Agreement.

"Link Orthopaedics Letter Agreement" shall mean the Stock Purchase Letter Agreement, dated December 31, 2002, between DERU and LHC.

"Loss" shall mean any and all losses, liabilities, damages, awards, assessments, judgments, fines, penalties, costs and expenses (including reasonable attorneys' fees and expenses incurred in investigating, preparing or defending any claims covered hereby). The amount of any such Losses for the purposes of indemnification hereunder shall be limited to the actual, direct and reasonably foreseeable damages sustained by the indemnified party and shall be (i) increased to take account of any net Tax cost incurred by the indemnified party arising from the receipt of indemnity payments hereunder ("grossed-up" for Taxes on such increase) (Sellers and Purchaser acknowledge that indemnity payments will be treated as purchase price adjustments for Tax purposes in accordance with Section 11.08 to the extent permitted by applicable law and therefore, to the extent that such treatment is not successfully challenged by the relevant taxing authority and is consistent with applicable law, no Tax cost will arise in connection with such payments), (ii) reduced to take account of any net Tax benefit realized by the indemnified party arising from the incurrence or payment of any such Losses and (iii) reduced to take into account any insurance proceeds actually received by an indemnified party that reduces the Losses that would otherwise be sustained. In computing the amount of any such Tax cost or Tax benefit, the indemnified party shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnity payment hereunder or the incurrence or payment of any and all Losses. For purposes of this Agreement, an indemnified party shall be deemed to have incurred a net Tax cost or realized a net Tax benefit to the extent that, and at such time as, the amount of Taxes payable by such indemnified party is increased above or reduced below, as the case may be, the amount of Taxes that such indemnified party would be required to pay but for the accrual or receipt of the indemnity payment or the accrual or payment of such Loss, as the case may be. In the case of Tax benefits realized in years subsequent to the year in which the Loss giving rise to such Tax benefits is incurred (including, but not limited to, Tax benefits realized in connection with depreciation and amortization deductions and net operating loss carryforwards) to the extent that an indemnified party has already received an indemnity payment relating to the applicable Loss, such indemnified party shall pay back to the indemnifying party the amount of such Tax benefits when they are actually realized. The parties acknowledge and agree that, when Purchaser is the indemnified party, the determination of any Tax benefit shall be made solely in the good faith reasonable judgment of Purchaser and that Sellers shall not have any right to review any Tax Return (or related work papers) of Purchaser, LHC, the Company or any of their Affiliates in connection with such determination; provided, however, that Purchaser shall provide the Seller Representative with a certificate of the officer of Purchaser responsible for filing Tax Returns setting forth in reasonable detail the amount of such Tax benefit and the method of calculating such benefit.



"Material Adverse Effect" shall mean any change, effect or circumstance that is materially adverse (taken alone or in the aggregate with any other change or effect) to the business, assets, condition (financial or otherwise), liabilities (contingent or otherwise) or results of operations of LHC or the Company, taken together, excluding the effects of changes, effects or circumstances to the extent related to or resulting from (i) events affecting the United States or global economy generally or (ii) general changes in conditions in the industries in which the Company or its customers or suppliers conduct business. The term "Material Adverse Effect" shall include any of the following events: (a) the Company elects, or the FDA requires, that the Clinical Study be permanently stopped, (b) the FDA refuses to accept the PMA Application for filing and either does not afford the Company a reasonable opportunity to cure the cause of any such refusal or, in the event such refusal necessitates re-filing with the FDA, is of such a nature that the Company could not reasonably be expected to be able to re-file the PMA Application within 180 days from the date of refusal, (c) the FDA requires substantial additional clinical studies prior to approval of the PMA Application such that the Company could not reasonably be expected to receive FDA Approval prior to 2006, (d) the FDA denies approval of the PMA Application and the reasons for such denial are of such a nature that the Company could not reasonably be expected to obtain approval within 180 days from the date of such denial and (e) the Company becomes aware of data or information from the IDE or otherwise that is of such a materially adverse nature that the Company could not reasonably be expected to receive FDA Approval.

"Medical Devices Directive" shall mean Council Directive 93/442/EEC of 14 June 1993 concerning medical devices, as amended from time to time.

"Modified Device" shall mean any modified or subsequent version of the Device, but solely to the extent that such modified or subsequent version of the Device (i) is marketed and sold pursuant to the PMA Application or any supplements thereto, or, to the extent in effect as of the date of this Agreement, the foreign equivalents thereof, or (ii) makes use of any technology described in any Patent in respect of the Device that is owned by the Company as of the date hereof.

"Net Sales of the Device" shall mean total sales in local currency of the Device or any Modified Device (excluding related instruments in any case), as invoiced by the Company, Purchaser or any Affiliate of Purchaser to third parties worldwide, less returns, amounts written-off or deemed uncollectible and written off, rebates, shipping, freight and freight insurance paid by the Company, Purchaser or any Affiliate of Purchaser and any duties and taxes or other governmental charges levied on or measured by invoice amount with allowance for promotional discounts directly relating to the Device or such Modified Device, in each case as calculated in accordance with United States generally accepted accounting principles, as applied by Johnson & Johnson in its financial statements.

"Notified Body" shall mean an entity licensed, authorized or approved by a Governmental Entity to assess and certify the conformity of a medical device with the requirements of the Medical Devices Directive and applicable standards.

"Optionholder" shall mean those Sellers who hold Options as set forth on Schedule I attached hereto.

"Option Letters" shall mean the collective reference to each letter agreement by and between an Optionholder and the Company, accelerating the Options specified therein in connection with the transactions contemplated by this Agreement.

"Options" shall mean those options to purchase shares of Common Stock as set forth in Schedule I attached hereto.

"Option Shares" shall mean all shares of Common Stock issuable upon the exercise of the Options.

"Patents" shall mean patents (including all reissues, divisions, continuations, continuations in part and extensions thereof), patent applications and patent disclosures docketed.

"Permitted Encumbrances" shall mean, to the extent applicable, Encumbrances which (a) are statutory liens for Taxes or other assessments or charges by Governmental Entities that are not yet due and payable, (b) do not, individually or in the aggregate, materially detract from the value of the assets to which they attach, or (c) are mechanics', carriers', materialmen's, landlords', workers' or other similar liens incurred in the ordinary course of business that are for sums not yet due and payable.

"Person" shall mean any natural person, corporation, limited liability company, trust, unincorporated association, partnership, joint venture or other entity.

"PMA Application" shall mean a premarket approval application under Section 515(c) of the FDCA requesting FDA approval to commercially sell and distribute the Device (without bioactive coating) in the United States and its territories and possessions.

"Post-Closing Tax Period" shall mean any taxable period or portion thereof beginning after the Closing Date. If a taxable period begins on or before the Closing Date and ends after the Closing Date, then the portion of the taxable period that begins at the beginning of the day after the Closing Date shall constitute a Post-Closing Tax Period.

"Pre-Closing Tax Period" shall mean any taxable period or portion thereof ending on or before the close of business on the Closing Date. If a taxable period begins on or before the Closing Date and ends after the Closing Date, then the portion of the taxable period that ends at the close of business on the Closing Date shall constitute a Pre-Closing Tax Period.

"Qualified Contractor Agreement" shall mean that certain letter agreement, dated as of the date hereof, by and between Link Castings and Waldemar.

"Qualified Contractor Assignment" shall mean that certain assignment agreement, dated as of the date hereof, by and between Link Castings and the Company.

"Revenue Allocation Letter" shall mean the certain letter agreement, dated as of the date hereof, by and between Link Castings and the Company, relating to the allocation of revenue between Link Castings and the Company.

"Seller Indemnitees" shall mean, (i) with respect to any claim for indemnification pursuant to clause (iii) of Section 11.03(a), Link Castings and any of its Affiliates and their respective members, partners, stockholders, officers, directors, employees, agents and representatives, (ii) with respect to any claim for indemnification pursuant to Section 11.09(b) and clauses (i), (ii) and (iv) of Section 11.03(a), Sellers and any of their respective Affiliates and their respective members, partners, stockholders, officers, directors, employees, agents and representatives and (iii) when used in any other provision of this Agreement, the Persons described in clauses (i) and (ii) of this definition, collectively.

"Seller Representative" shall mean HDL or such other Person as Sellers that hold or, at the Closing held, directly and indirectly, a majority of the Common Stock may appoint by delivering written notice thereof to Purchaser.

"Stock Option Plan" shall mean the Amended and Restated Stock Option and Restricted Stock Plan of the Company.

"Stockholders Agreement" shall mean that certain stockholders agreement, dated March 1, 2000, by and among the Company, HDL, [REDACTED] and [REDACTED] as amended on March 12, 2000.

"Subsidiary" shall mean, with respect to LHC or the Company, as the case may be, each Person of which a majority of the voting power of the voting equity securities or equity interests is owned, directly or indirectly, by LHC or the Company, respectively.

"Supply Agreement" shall mean that certain Supply Agreement, dated as of the date hereof, by and between the Company and Link Castings.

"Taxes" shall mean all taxes on, or measured by or referred to as, income, gross receipts, capital, sales, use, ad valorem, franchise, profits, license, withholding, wage, payroll, employment, excise, severance, transfer, stamp, occupation, premium, property, alternative minimum, add-on, environmental or windfall profits taxes, customs, duties or any other similar taxes, duties, assessments or charges, together with any interest and any penalties, additions to tax or additional similar amounts imposed by any taxing authority, domestic or foreign, with respect thereto.

"Tax Indemnifying Party" shall mean (i) Sellers in the case of any obligation to indemnify and hold harmless Purchaser Indemnitees pursuant to Section 11.09 in respect of Taxes relating to the Company or any Company Tax Group and (ii) HDL in the case of any obligation to indemnify and hold harmless Purchaser Indemnitees pursuant to Section 11.09 in respect of Taxes relating to LHC, any LHC Entity or any LHC Tax Group.

"Tax Returns" shall mean all returns, reports and statements relating to Taxes that are required to be filed with any appropriate domestic or foreign taxing authority.

"Total Purchase Price" shall mean the sum of the Closing Date Purchase Price, the FDA Approval Amount paid pursuant to Section 2.04(a) hereof (net of any FDA Restriction Deduction) and any Additional Contingent Payments paid pursuant to Section 2.04(b) hereof, in each case after giving effect to the deduction of any Transaction Expenses, Debt Obligation

his ownership in the Common Stock of the Company held by LHC, to Purchaser, (ii) the Company Stockholders agree to sell, assign, transfer, convey and deliver all the issued and outstanding shares of capital stock of the Company which are not owned by LHC (the "Company Shares" (which term is understood to include the Option Shares as of the Closing), and together with the LHC Shares, the "Shares") to Purchaser, and (iii) Purchaser agrees to purchase and accept the Shares from Sellers and to pay the Closing Date Purchase Price (as defined below) on the Closing Date, and to pay any additional amounts which it may be required to pay pursuant to Section 2.04 following the Closing Date.

2.02. Closing Date Purchase Price; Payments.

(a) The aggregate amount to be paid by Purchaser on the Closing Date shall be \$ [REDACTED] (the "Closing Date Purchase Price"). At the Closing, Purchaser shall pay the Closing Date Purchase Price by wire transfer of immediately available funds as follows:

(i) to an interest bearing account with the Escrow Agent pursuant to the terms of the Escrow Agreement, for the purpose of securing and satisfying the indemnification obligations of Sellers as set forth in this Agreement, an amount equal to \$ [REDACTED] (the "Escrow Fund");

(ii) to such account or accounts of the Company as the Company specifies, in order to pay and discharge such obligations, an amount equal to the Debt Obligation of LHC and the Company as of the Closing Date (the "LHC Closing Date Debt Obligation Amount" and the "Company Closing Date Debt Obligation Amount", respectively); Sellers shall cause the Company to deliver to Purchaser, not less than three (3) Business Days before the Closing Date, the calculation of the LHC Closing Date Debt Obligation Amount and the Company Closing Date Debt Obligation Amount and shall cause LHC and the Company to specify such amount in a certificate signed by an executive officer of each of LHC and the Company;

(iii) to such account or accounts of the Company as the Company specifies, in order to pay and discharge such expenses, an amount equal to the Transaction Expenses;

(iv) to such account or accounts of the Company as the Company specifies, in order to pay and discharge such obligations, an amount equal to the Closing Date Deal Payment Obligations, net of any required tax withholding;

(v) to such account or accounts as HDL specifies, in order to pay and discharge such obligations, \$ [REDACTED] as consideration for the covenant set forth in Section 7.06 (the "Non-Compete Payment"); and

(vi) to Sellers in accordance with the percentages set forth on Schedule II (with respect to each Seller, such Seller's "Percentage Interest") to such account or accounts as they may specify, the remainder of the Closing Date Purchase Price (the aggregate amount of such remainder, the "Stockholder Payments").

Purchaser and HDL will follow the allocation referenced in clause (v) of the foregoing sentence in determining and reporting their liabilities for federal, state, local and foreign Tax Returns filed by them.

(b) Immediately upon the purchase of the Shares on the Closing Date, Purchaser shall cause the LHC Closing Date Debt Obligation Amount, the Company Closing Date Debt Obligation Amount, the Transaction Expenses, the Closing Date Deal Payment Obligations and the Non-Compete Payment (in each case, net of any required withholdings) to be paid by or on behalf of the Company in full by causing the payments to be made from the accounts specified by the Company pursuant to clauses (ii) through (v) of paragraph (a) above.

(c) Sellers shall notify Purchaser in writing of (x) the amount of the Transaction Expenses and (y) the account information referred to in paragraph (a) above, in each case, not less than three (3) Business Days prior to the Closing Date.

2.03. The Closing. Upon the terms and subject to the conditions set forth in this Agreement, the acquisition by Purchaser of the Shares (herein called the "Closing") shall take place at 10:00 a.m. at the offices of [REDACTED] on the second Business Day following the date on which the conditions set forth in Articles VIII and IX (other than those that by their terms are to be satisfied or waived at the Closing) shall have been satisfied or waived, or such other time, date and place as the parties shall agree upon (the date of the Closing being herein referred to as the "Closing Date").

2.04. Additional Contingent Payments.

(a) FDA Approval Payments.

(i) FDA Approval Amount. If FDA Approval is received on or prior to March 31, 2006, within ten (10) Business Days of receipt by the Company of the FDA Approval, Purchaser shall cause to be paid to Sellers as further consideration for the Shares, an amount (the "FDA Approval Amount") in accordance with the schedule set forth below:

<u>Date of Receipt of FDA Approval</u>	<u>FDA Approval Amount</u>
On or before December 31, 2004	\$ [REDACTED]
During the month of January 2005	\$ [REDACTED]
During the month of February 2005	\$ [REDACTED]
During the month of March 2005	\$ [REDACTED]
During the month of April 2005	\$ [REDACTED]
During the month of May 2005	\$ [REDACTED]
During the month of June 2005	\$ [REDACTED]
During the month of July 2005	\$ [REDACTED]
During the month of August 2005	\$ [REDACTED]

During the month of September 2005	\$ [REDACTED]
During the month of October 2005	\$ [REDACTED]
During the month of November 2005	\$ [REDACTED]
During the month of December 2005	\$ [REDACTED]
During the month of January 2006	\$ [REDACTED]
During the month of February 2006	\$ [REDACTED]
During the month of March 2006	\$ [REDACTED]
On or after April 1, 2006	\$ [REDACTED]

Notwithstanding the foregoing, the FDA Approval Amount, if greater than zero, payable to Sellers in accordance with this Section 2.04(a) shall be: (x) reduced by (1) the FDA Approval Date Deal Payment Obligations and (2) in the event, and only in the event, that the FDA Approval contains, as a condition thereto, a requirement that the Device be tracked in patients post-implantation pursuant to 21 C.F.R. Part 821, an amount to be mutually agreed upon by Purchaser and the Seller Representative (the "FDA Restriction Deduction") that is designed to reflect Purchaser's estimated cost of complying with such requirement, but in no event greater than [REDACTED]; and (y) increased by an amount equal to the interest on the FDA Approval Amount (as reduced by the FDA Restriction Deduction, if any) accruing at the rate of [REDACTED] per annum from the date which is ten (10) Business Days following the date of receipt of the FDA Approval to the date on which the FDA Approval Amount (as reduced by the FDA Restriction Deduction, if any) is paid.

~~(ii) Mode of Payment. Any payment of the FDA Approval Amount as further consideration for the Shares made pursuant to this Section 2.04(a) shall be made by Purchaser to the Seller Representative on behalf of Sellers to be distributed to Sellers by the Seller Representative *pro-rata* in accordance with their respective Percentage Interests, to such account as the Seller Representative may specify.~~

(b) Other Contingent Payments.

(i) Calculation of Other Contingent Payments. In addition to the foregoing payments, if Net Sales of the Device exceed the level set forth below during the corresponding Calendar Year set forth below, then Purchaser shall, for each such year and as further consideration for the Shares, cause to be paid to Sellers an additional payment (the "Additional Contingent Payment") equal to [REDACTED] of the amount, if any, by which Net Sales of the Device for such Calendar Year exceed the amount set forth below during the corresponding Calendar Year:

<u>Calendar Year</u>	<u>Threshold for Contingent Payment on Net Sales of the Device</u>
2004	Net Sales of the Device Greater than [REDACTED]
2005	Net Sales of the Device Greater than [REDACTED]

2006 Net Sales of the Device Greater than [REDACTED]  
2007 Net Sales of the Device Greater than [REDACTED]  
2008 Net Sales of the Device Greater than [REDACTED]

provided, however, that any Additional Contingent Payments payable to Sellers in accordance with this Section 2.04(b) shall be reduced by the related Contingent Deal Payment Obligations.

(ii) Procedures for Determining the Net Sales of the Device. Not more than ninety (90) days after the end of each Calendar Year referred to in clause (i) above, Purchaser shall deliver a notice (the "Notice"), setting forth the total sales volume and the calculation of Net Sales of the Device during such Calendar Year, to an independent auditing firm of recognized national standing (the "Neutral Auditor") mutually agreed upon by Purchaser and the Seller Representative prior to the end of the first such Calendar Year, which firm will not be the regular auditing firm of Purchaser or HDL or any of their respective Affiliates. The Neutral Auditor shall promptly, but not later than sixty (60) days after its receipt of the Notice, take such actions as are reasonably necessary to determine the amount of Net Sales of the Device for the Calendar Year covered by the Notice and the corresponding amount, if any, of the Additional Contingent Payment. Promptly after making such determination, the Neutral Auditor shall deliver to Purchaser and the Seller Representative a report (the "Final Report") which shall set forth the amount, if any, of Additional Contingent Payment owed to Sellers and shall be final, conclusive, non-appealable and binding upon the parties. The Final Report shall not disclose the amount of Net Sales of the Device or any other information provided to the Neutral Auditor pursuant to this Section 2.04(b)(ii). Purchaser shall, subject to appropriate confidentiality undertakings by the Neutral Auditor, provide the Neutral Auditor, at the time of delivery of the Notice, with all documentation and work papers of Purchaser reflecting Purchaser's determination of Net Sales of the Device for the applicable period and shall further cooperate with, and during normal business hours provide, the Neutral Auditor with reasonable access to sales invoices, sales reports or analyses, shipping documents, accounts receivable records, and other sales data, including, to the extent any adjustments are made to invoiced amounts, information relating to such adjustments, in each case solely to the extent such access may be reasonably required in connection with the Neutral Auditor's preparation and analysis of the Net Sales of the Device and issuance of the Final Report. The Neutral Auditor's determination shall be based upon and consistent with the terms and conditions of this Agreement. It is understood and agreed that the Seller Representative and Sellers shall not have any access to the information provided to the Neutral Auditor or any other information relating to the determination of the Net Sales of the Device or the Additional Contingent Payment, even in the event of a dispute regarding such amounts. All fees of the Neutral Auditor shall be split equally between Purchaser, on the one hand, and Sellers, on the other hand, provided, that to the extent that the portion of such fees owed by Sellers with respect to such Calendar Year is more than the Aggregate Contingent Payment with respect to such Calendar Year, HDL shall pay his Percentage Interest of the Sellers' portion of such fees and the other Sellers shall be relieved of their obligation to pay their Percentage Interest of such excess.

(iii) Mode of Payment. Purchaser shall pay such Additional Contingent Payment stated in the Final Report in respect of any Calendar Year by wire transfer of immediately available funds to the Seller Representative on behalf of Sellers to be distributed to Sellers *pro rata* in accordance with their respective Percentage Interests, to such account or accounts specified by the Seller Representative, within five (5) Business Days from the date of receipt of the Final Report.

(c) Currency. All payments required to be made by Purchaser pursuant to this Section 2.04 shall be made in Dollars. For the purpose of computing the Net Sales of the Device sold in a currency other than Dollars, such currency will be converted from local currency to Dollars by Purchaser in accordance with the rates of exchange for the applicable quarter for converting such other currency into Dollars used by Purchaser's internal accounting systems.

(d) Covenants Regarding Contingent Payments.

(i) Sellers acknowledge, understand and agree that, after the Closing, Purchaser and its Affiliates (including, from and after the Closing, LHC and the Company) shall exercise operational control of the business and assets of LHC and the Company without interference by Sellers or any of LHC's or the Company's former directors, officers, Affiliates, shareholders, representatives or agents. Sellers understand that the future creation and marketing of the Device is to be exercised by Purchaser and its Affiliates in accordance with their own business judgment and in their sole and absolute discretion. Sellers further acknowledge, understand and agree that: (A) Purchaser and its Affiliates will have complete control and sole and absolute discretion with respect to decisions concerning the research, development, operations, marketing and regulatory matters and the sale of the Device after the Closing, (B) such control and discretion over research, development, operations, marketing, regulatory matters and sales by Purchaser and its Affiliates could have a material adverse effect upon any amount that may be payable under Section 2.04 of this Agreement, (C) such control and discretion by Purchaser and its Affiliates over the matters set forth in clauses (A) and (B) above could result in Sellers receiving no amounts whatsoever under Section 2.04 of this Agreement and (D) Purchaser and its Affiliates have no duty to Sellers to commercially exploit the Device or to exert any level of efforts in marketing the Device. In addition, Sellers acknowledge, understand and agree that whether or not Purchaser or any of its Affiliates make any sales of the Device after the Closing, neither Purchaser, nor any of its Affiliates are prohibited from researching, developing, manufacturing, marketing or selling other products that may compete with or reduce the sales of the Device and such competing products are currently in development by Purchaser and its Affiliates. Sellers also acknowledge, understand and agree that personnel of Purchaser and its Affiliates are only required to take actions in connection with the commercial exploitation of the Device that such personnel believe to be in the best interests of Purchaser and, as applicable, its Affiliates, and that they are not required to take into account the interests of Sellers in determining whether to take such actions. Accordingly, Sellers agree not to challenge in any subsequent claim or action any decision regarding such commercial exploitation of the Device made by the Company or any director, officer, employee



or agent of Purchaser or of any of its Affiliates in what the Company or such decision-making individual subjectively believes to be the best interests of Purchaser or any of its Affiliates, unless such action constitutes a breach by Purchaser of any of its express obligations to make payments under this Agreement or the Transaction Documents.

(ii) In the event Purchaser or any of its Affiliates determines to sell, transfer, assign or otherwise dispose of (directly or indirectly) all or substantially all of the assets used primarily in the Company's business (other than as a result of any sale, consolidation, merger, combination or other similar transaction involving a sale of control of Purchaser), or sell direct voting control of the stock in the Company to a Person who is not an Affiliate of Purchaser, or cause the Company to enter into any consolidation, merger, combination or other similar transaction in which the voting control of the surviving entity is no longer controlled by Purchaser or its Affiliates, then express provision shall be made as part of the terms of such transaction whereby the resulting, surviving, or transferee Person will expressly assume all of the obligations of Purchaser under this Section 2.04.

(e) Indefeasibility of Contingent Payments. The obligations of Purchaser under this Section 2.04 to make any payments provided for herein shall not be affected by the death or disability of any Seller.

2.05. Further Assurances. From and after the Closing, upon written request from Purchaser and at the expense of Purchaser, Sellers shall execute, acknowledge and deliver and procure the same from others all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or desirable to sell, assign, transfer, convey and deliver the Shares to Purchaser or to further effect the other transactions contemplated by this Agreement and the Transaction Documents.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES RELATING TO SELLERS

Each of the Sellers, solely as to itself, severally and not jointly, represents and warrants to Purchaser that:

3.01. Authorization. Such Seller has the full right, capacity and power to execute and deliver this Agreement and each Transaction Document to which such Seller is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by such Seller and constitutes, and such other Transaction Documents when duly executed and delivered by such Seller will constitute (assuming that this Agreement and each other such Transaction Document to be executed by such Seller pursuant hereto will constitute a legal, valid and binding obligation of such other Person or Persons party hereto and thereto), legal, valid and binding obligations of such Seller enforceable against such Seller in accordance with their terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization,

moratorium and similar laws of general applicability relating to or affecting creditors' rights, general equitable principles and an implied covenant of good faith and fair dealing.

3.02. Non-Contravention. Except as set forth in Schedule 3.02, the execution and the delivery of this Agreement and the Transaction Documents to which such Seller is a party do not, and the consummation of the transactions contemplated hereby or thereby will not, conflict with or result in (i) a violation of or conflict with any provision of the Certificate of Incorporation or By-laws of the Company, (ii) a violation of any judgment, order or decree, or statute, law, ordinance, rule or regulation to which such Seller or the Company is subject or (iii) a breach of, or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any person under, or result in the creation of any Encumbrance upon any of the properties or assets of such Seller or the Company under, any provision of any material Contract to which such Seller or the Company is a party or by which any of his or its properties or assets are bound, other than, in the cases of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, could not reasonably be expected to prevent, materially delay or materially impair the consummation by such Seller of the transactions contemplated by this Agreement and the other Transaction Documents.

3.03. Consents and Approvals. No approval, authorization, consent or other order or action of or filing with any Governmental Entity is required to be obtained or made by such Seller in connection with the execution, delivery and performance of this Agreement by such Seller or the sale of the Shares to be sold by such Seller as contemplated hereby and the consummation of the other transactions contemplated by this Agreement and the other Transaction Documents, other than (x) the filing of all notices, reports and other documents required by, and the expiration or termination of all waiting periods under, the HSR Act and similar competition laws of those foreign countries set forth in Schedule 4.03, and (y) any other approval, authorization, consent or other order or action or filing the failure of which to obtain or file could not reasonably be expected to prevent, materially delay or materially impair the consummation by such Seller of the transactions contemplated by this Agreement and the other Transaction Documents.

3.04. Title to Shares. Such Seller is the record and beneficial owner of and has good and valid title to the Shares set forth opposite such Seller's name on Schedule I, free and clear of any Encumbrances, except as created by the Stockholders Agreement (which Encumbrance shall be terminated at or prior to Closing). In the event such Seller is listed as an Optionholder in Schedule I, such Seller shall at the time of Closing be the record and beneficial owner of, and have good and valid title to, the Shares underlying the Options set forth opposite such Seller's name on Schedule I, free and clear of any Encumbrances. Except as set forth on Schedule 3.04, there are no voting trusts, shareholder agreements, commitments, undertakings, understandings, proxies or other restrictions to which such Seller or any other Person is a party which directly or indirectly restrict or limit in any manner, or otherwise relate to, the voting, dividend rights, sale or other disposition of any shares of capital stock of LHC or the Company. Upon delivery to Purchaser at the Closing of certificates representing the Shares, duly endorsed by such Seller for transfer to Purchaser in accordance with Section 10.01(a), and upon such Seller's receipt of the Closing Date Purchase Price, as adjusted pursuant to Section 2.04, such Seller will transfer good

and valid, legal and beneficial title to the Shares set forth opposite such Seller's name on Schedule I to Purchaser, free and clear of all Encumbrances, other than those created or incurred by Purchaser or any of its Affiliates.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY

Each Seller, jointly and severally, represents and warrants to Purchaser with respect to the Company that:

4.01. Organization and Qualification of the Company; Non-Contravention. (a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has full power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to use its corporate name and to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted other than such franchises, licenses, permits, authorizations and approvals the lack of which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The Company is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership, leasing or holding of its properties makes such qualification necessary, except such jurisdictions where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect. A list of the jurisdictions in which the Company is so qualified is set forth in Schedule 4.01(a). Sellers have delivered to Purchaser true and complete copies of the Company's Certificate of Incorporation and By-laws, as amended to date. The stock certificate and transfer books and the minute books of the Company (which have been made available for inspection by Purchaser prior to the date hereof) are true and complete in all material respects.

(b) Except as set forth in Schedule 4.01(b), the execution and the delivery of this Agreement and the Transaction Documents do not, and the consummation of the transactions contemplated hereby or thereby will not, result in (i) a violation of or conflict with any provision of the Certificate of Incorporation or By-laws of the Company, (ii) a violation of any judgment, order or decree, or statute, law, ordinance, rule or regulation to which the Company is subject or (iii) a breach of, or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any person under, or result in the creation of any Encumbrance upon any of the properties or assets of the Company under, any provision of any material Contract (including those set forth or required to be set forth in the Schedules) to which the Company is a party or by which any of its properties or assets are bound, other than, in the case of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.02. Capital Stock of the Company. The authorized capital stock of the Company consists of (i) [REDACTED] shares of Common Stock, of which, as of the date hereof, [REDACTED] shares are issued and outstanding and [REDACTED] shares are reserved for issuance under the Stock Option Plan (of which [REDACTED] shares of Common Stock are issuable upon the exercise of the Options),

and (ii) [REDACTED] shares of preferred stock, par value [REDACTED] per share, none of which are issued or outstanding. The [REDACTED] shares of Common Stock that are issued and outstanding as of the date hereof have been duly authorized, validly issued, fully paid and nonassessable and have not been issued in violation of, and are not subject to, any purchase option, call, right of first refusal, preemptive, subscription or other similar rights under any provision of applicable law, the Certificate of Incorporation or By-laws of the Company or any Contract to which the Company is subject, bound or a party or otherwise. The shares of Common Stock subject to the Options will be, upon exercise of such Options, duly authorized, validly issued, fully paid and nonassessable and will not have been issued in violation of, and will not be subject to, any purchase option, call, right of first refusal, preemptive, subscription or other similar rights under any provision of applicable law, the Certificate of Incorporation or By-laws of the Company or any Contract to which the Company is or will be at the time of such issuance subject, bound or a party or otherwise. Except as set forth above, there are no shares of capital stock or other equity securities of the Company outstanding. Other than, prior to Closing, the Options, there are not any outstanding options, rights, "phantom" stock rights, warrants, agreements, convertible or exchangeable securities or other commitments (other than this Agreement) (i) pursuant to which Sellers, the Company or any Affiliate of Sellers or the Company is or could be obligated to issue, sell, purchase, return or redeem any shares of capital stock of the Company, and there are no equity securities of the Company reserved for issuance for any purpose or (ii) that give any person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to the holders of shares of capital stock of the Company. Except for [REDACTED] shares reserved for issuance pursuant to the Stock Option Plan, of which [REDACTED] shares are subject to the Options, there are no equity securities of the Company reserved for issuance for any purpose. Except as set forth on Schedule 4.02, there are no outstanding bonds, debentures, notes or other indebtedness having the right to vote on any matters on which stockholders of the Company may vote. As of the Closing Date, none of the items set forth on Schedule 4.02 will be outstanding.

4.03. Consents and Approvals. No approval, authorization, consent or other order or action of or filing with any Governmental Entity is required to be obtained or made by the Company in connection with the execution, delivery and performance of this Agreement by Sellers or the sale of the Shares to be sold by Sellers as contemplated hereby and the consummation of the other transactions contemplated by this Agreement and the other Transaction Documents, other than (x) the filing of all notices, reports and other documents required by, and the expiration or termination of all waiting periods under, the HSR Act and similar competition laws of those foreign countries set forth in Schedule 4.03, and (y) any other approval, authorization, consent or other order or action the failure of which to obtain could not reasonably be expected to prevent, materially delay or materially impair the consummation by such Seller of the transactions contemplated by this Agreement and the other Transaction Documents. HDL, as holder of the promissory notes described on Schedule 4.02, has, in such capacity, consented to the transactions contemplated by this Agreement.

4.04. Other Equity Interests. The Company does not directly or indirectly currently own and has not in the past owned any capital stock of or other equity interest in any Person and is not a member or a participant in any partnership, joint venture or similar Person.

4.05. Financial Statements; No Undisclosed Liabilities. (a) Sellers have previously furnished to Purchaser the Company's audited balance sheets as of December 31, 2002 (the

Company has good and valid title to the machinery, equipment and other tangible personal property reflected in the Company Audited Balance Sheet as being owned by it, free and clear of all Encumbrances, other than Permitted Encumbrances and Encumbrances that will be removed at the Closing pursuant to Section 8.07; and the Company is the lessee of all the leasehold estates pertaining to the machinery, equipment and other tangible personal property purported to be granted by the capitalized leases reflected in the Company Audited Balance Sheet, if any. Each capitalized lease pursuant to which such leasehold estate is granted is valid and in full force and effect without any material default thereunder by the Company, or, to the knowledge of Sellers, by the lessor.

4.09. Intellectual Property Rights. (a) Schedule 4.09(a)(i) lists all the Patents and Trademarks owned or licensed by the Company which are used in and are material to the Company's business. Except as otherwise disclosed in Schedule 4.09(a)(ii), the Company validly owns, beneficially and of record, the entire right, title and interest in and to the Patents and Trademarks listed in Schedule 4.09(a)(i) and all other Intellectual Property Rights used or held for use by the Company in its business as presently conducted (other than to the extent such Intellectual Property Rights are licensed to the Company pursuant to license agreements listed in Schedule 4.09(d)(ii), free and clear of all Encumbrances other than Permitted Encumbrances and Encumbrances that will be removed at the Closing pursuant to Section 8.07. Except as disclosed in Schedule 4.09(a)(ii), no action, claim, suit or proceeding has been brought against the Company or, to the knowledge of Sellers, has been threatened against the Company with respect to any Intellectual Property Rights used in the Company's business that challenges the Company's right to use such Intellectual Property Rights in the manner the Company currently uses such rights. Except as set forth in Schedule 4.09(a)(ii), the Company has not entered into any Contract or other understanding with any third party with respect to any such Intellectual Property Rights which would adversely affect the Company's ability to use such Intellectual Property Rights.

(b) The Patents listed on Schedule 4.09(a)(i) comprise the only patents or patent applications related to the Device (including improvements thereto) that the Company currently owns. The Company's Intellectual Property Rights are sufficient in all material respects to permit the Company to make, use and sell the Device worldwide and otherwise to permit the continued lawful conduct of the business of the Company in the manner now conducted. The Patents listed on Schedule 4.09(b) are not used in the current design of the Device.

(c) To the knowledge of Sellers, the Device does not infringe upon any Patent not owned by the Company or any other Intellectual Property Rights not vested in the Company. To the knowledge of Sellers there are no Patents, Patent applications or other Intellectual Property Rights owned by a third party and not exclusively licensed to the Company that would present any issue of infringement by reason of the manufacture of the Device, or the use or sale of the Device. No action, claim, suit or proceeding has been brought against the Company, HDL or any of HDL's Affiliates, or to the knowledge of Sellers, has been threatened against the Company, HDL or any of HDL's Affiliates that alleges that the Device infringes a Patent not owned by the Company or any other Intellectual Property Right not vested in the Company.

“Company Audited Balance Sheet”), December 31, 2001 and December 31, 2000, audited statements of operations and comprehensive loss and statements of cash flows for the one-year periods ended December 31, 2002, December 31, 2001 and December 31, 2000, together with the footnotes to such financial statements (together, the “Company Audited Financial Statements”), true and complete copies of which are included in Schedule 4.05(a). The Company Audited Financial Statements were prepared in accordance with the Applicable Accounting Principles and present fairly in all material respects the financial position, results of operations and cash flows of the Company as of the respective dates thereof and for the respective periods covered thereby.

(b) The Company does not have any obligations or liabilities of any kind whatsoever (whether accrued, absolute, contingent or otherwise), other than obligations or liabilities (i) that are reflected or disclosed in the Company Audited Balance Sheet, (ii) that were incurred by the Company after December 31, 2002, in the ordinary course of business consistent with past practice and which are not individually or in the aggregate material to the Company, (iii) set forth in Contracts listed on Schedule 4.11, other than obligations or liabilities due to any breach or non-performance thereunder or (iv) that (A) are not individually or in the aggregate material to the Company and (B) are not required in accordance with Applicable Accounting Principles to be reflected on a balance sheet of the Company.

(c) Schedule 4.05(c) sets forth the Company’s sales and revenues by country, during the fiscal year ended December 31, 2002.

4.06. Absence of Certain Changes and Actions. Except as disclosed in Schedule 4.06, since December 31, 2002, the Company has conducted its business, in all material respects, in the ordinary course and in substantially the same manner as previously conducted. Since December 31, 2002, there has not occurred any change or event nor does there exist any condition (in each case, alone or taken with others) which has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as disclosed in Schedule 4.06, since December 31, 2002 through the date of this Agreement, the Company has not taken any action that would have been prohibited by the terms of Section 7.01 had this Agreement been in effect as of December 31, 2002 and had the consent of Purchaser not been first obtained by the Company.

4.07. Real Property. The Company does not own any real property or interests in real property. Schedule 4.07 contains a list of all real property and interests in real property leased by the Company (the “Real Property”) and lists the terms of such leases, any extension or expansion options and the rent payable thereunder. The Company is the lessee of the Real Property listed on Schedule 4.07 and, except as set forth in Schedule 4.07, is in possession of each of the premises purported to be so leased. Each such lease pursuant to which such leasehold estate is granted is valid, in full force and effect, enforceable in accordance with its terms and without any material default thereunder by the Company, or, to the knowledge of Sellers, by the landlord. There is no pending or, to the knowledge of Sellers, threatened, condemnation, eminent domain or similar proceeding with respect to the Real Property.

4.08. Personal Property. Except for obsolete assets and assets disposed of for fair value in the ordinary course of business consistent with past practice since December 31, 2002, the

4.10. Litigation. Except as disclosed in Schedule 4.10, there is no action, suit, proceeding, arbitration or investigation pending or, to the knowledge of Sellers, threatened against Sellers or the Company in any court or before any Governmental Entity (i) relating to or involving any amount of money (except any such matter brought after the date hereof relating to or involving less than [REDACTED] (other than any such matters all arising out of substantially similar facts or circumstances each involving less than [REDACTED] but involving more than [REDACTED] in the aggregate)), (ii) seeking any injunctive relief or (iii) which may give rise to any legal restraint on or prohibition against the transactions contemplated by this Agreement or the Transaction Documents. The Company does not intend to initiate any action, suit, proceeding, arbitration or investigation against any other Person. The Company is not a party or subject to or in material default under any judgment, order, writ, injunction, stipulation, award or decree of any court or any Governmental Entity, or any arbitrator or mediator.

4.11. Contracts. (a) Except for the Contracts listed in Schedule 4.11, as of the date of this Agreement, the Company is not a party to any: (i) Contract with respect to the employment of any employee or director; (ii) Contract with any labor union or association; (iii) Contract in which Sellers or any Person who is a current or former officer, director or stockholder of LHC or the Company, or any Affiliate of such Person, has a significant economic interest; (iv) Contract relating to the borrowing or lending of money or otherwise creating or evidencing any indebtedness or guarantee of indebtedness; (v) license or royalty agreements (other than in connection with commercial "off-the-shelf" software pursuant to "shrink-wrap" licenses); (vi) distributor, dealer, sales agency or advertising Contract; (vii) Contract granting to any Person a right to purchase any of the Company's material assets, properties or rights, agreeing to acquire all or substantially all of the assets or business of any other Person (or division thereof) or containing a covenant or other agreement not to compete or otherwise restricting the development, manufacture, marketing, distribution or sale of the Device or any other products and services; (viii) Contract containing any "non-solicitation" or "no-hire" provision that restricts the Company; (ix) lease or similar Contract relating to personal property; (x) Contract for the purchase or sale of products or the furnishing or receipt of services (1) calling for performance over a period of more than one year, (2) requiring or otherwise involving payment by or to the Company of more than \$ [REDACTED] (3) in which the Company has granted manufacturing rights, "most favored nation" pricing provisions or marketing or distribution rights relating to any products or territory or (4) in which the Company has agreed to purchase a minimum quantity of goods or services or has agreed to purchase goods or services exclusively from a certain party; (xi) Contract under which the Company has, directly or indirectly, made any advance, loan, extension of credit or capital contribution to, or other investment in, any Person; (xii) Contract providing for indemnification of any Person; (xiii) Contract granting to any Party a warrant, option or other right to purchase or acquire capital stock of LHC or the Company, other than the Options; (xiv) Contract under which the execution and delivery of this Agreement and the Transaction Documents, or the consummation of the transactions contemplated hereby and thereby, would give rise to a right of termination, cancellation or acceleration, whether after the giving of notice or lapse of time or both; (xv) Contracts with manufacturers, vendors or suppliers of raw materials; or (xvi) other material Contract not made in the ordinary course of business. Except as disclosed in Schedule 4.11, each of the Contracts listed in Schedule 4.11 is, and immediately following the Closing, will continue to be valid, in full force and effect and enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws of

general applicability relating to or affecting creditors' rights, general equitable principles and an implied covenant of good faith and fair dealing), and the Company and, to the knowledge of Sellers, each other party to any such Contract, have each performed all material obligations required to be performed by it thereunder. There is no existing violation, breach or default under any Contract listed in Schedule 4.11 by the Company or, to the knowledge of Sellers, by any other party thereto, and no event has occurred or condition exists that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Company or, to the knowledge of Sellers, any other party thereto, except for any violations, breaches or defaults that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Other than as otherwise expressly contemplated by this Agreement, no notice, waiver, consent or approval is required (or the lack of which would give rise to a right of termination, cancellation or acceleration of, or entitle any party to accelerate, whether after the giving of notice or lapse of time or both, any obligation under any Contract listed or required to be listed in Schedule 4.11) under or relating to any Contract listed or required to be listed in Schedule 4.11 in connection with the execution and delivery of this Agreement and the Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

(b) The Company has no obligation to distribute the Device, or any other obligation or liability, under any distribution or similar agreement to which HDL or any of his Affiliates (other than the Company) is a party.

4.12. Certain Employees. Schedule 4.12 sets forth the name, title and current annual salary or compensation rate of each director, officer, employee or consultant of the Company who earns annual compensation from the Company in excess of \$ [REDACTED] together with a summary of the bonuses, additional compensation and other benefits, if any, paid or payable to such persons as of the date hereof or in the future. Except as set forth in Schedule 4.12, the Company is not subject to any obligation (absolute or contingent) to make any severance, change in control or similar payment to any current or former directors, officers, employees or consultants of the Company as a result of the consummation of the transactions contemplated by this Agreement and the Transaction Documents (whether or not in conjunction with any other event), other than such payments set forth on Schedule II.

4.13. Benefit Plans; No Excess Parachute Payments. (a) Schedule 4.13 lists each Employee Benefit Plan that the Company maintains or to which the Company contributes or is required to contribute. Sellers have furnished or made available to Purchaser a complete current copy of each Employee Benefit Plan (and, if applicable, related trust agreements, annuity contracts, insurance contracts, and summary plan descriptions).

(b) Except where the liability that would reasonably be expected to occur could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) to the knowledge of Sellers, each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all respects with the applicable requirements of ERISA, the



Code, the Health Insurance Portability and Accountability Act of 1996 and all applicable laws;

(ii) all contributions (including all employer contributions and employee salary reduction contributions) that are due have been timely made to each such Employee Benefit Plan that is an Employee Pension Benefit Plan and all premiums or other payments which are due have been timely paid with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan;

(iii) all of the Company's Employee Pension Benefit Plans intended to be tax-qualified have received favorable determination letters from the IRS and no such determination letter has been revoked (or, to the knowledge of Sellers, has revocation been threatened) and no event has occurred since the date of the most recent determination letter or application therefor relating to any such Employee Pension Benefit Plan that would reasonably be expected to adversely affect the qualification of such Employee Pension Benefit Plan or materially increase the costs relating thereto. The Company has delivered or made available to Purchaser a complete and accurate copy of the most recent determination letter received prior to the date hereof with respect to each Employee Pension Benefit Plan, as well as a complete and accurate copy of each pending application for a determination letter, if any.

(c) There are no pending complaints, suits, proceedings, claims, audits, or investigations (except claims for benefits payable in the normal operation of the Employee Benefit Plans) against any Employee Benefit Plan or involving or asserting any rights to benefits pending against any Plan, and, to the Company's knowledge, there are no such complaints, suits, proceedings, claims, audits, or investigations threatened against any Employee Benefit Plan.

(d) To the knowledge of Sellers, no "prohibited transaction," as defined in Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Employee Benefit Plan that would result in a material liability to the Company under Section 406 of ERISA or Section 4975 of the Code.

(e) The Company does not maintain, sponsor or contribute to any Employee Pension Benefit Plan that is subject to Title IV of ERISA. No Employee Benefit Plan constitutes a "multiemployer plan," within the meaning of Section 3(37) of ERISA, and, neither the Company nor any of its ERISA Affiliates has ever contributed to, been required to contribute to, or otherwise had any obligation or liability to any Employee Pension Benefit Plan that is subject to Title IV of ERISA. For the purpose of this Section 4.13(c), "ERISA Affiliate" means any entity that would be deemed to be a "single employer" with a Company under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

(f) The Company has no material obligation or accrued liability in respect of post-retirement health or life benefits, except to the extent required by Part 6 of Title I of ERISA or similar applicable state laws or as disclosed in the Company Audited Financial Statements.

(g) Except as set forth in Schedule 4.13, neither the execution and delivery of this Agreement or the Transaction Documents, nor the consummation of the transactions

contemplated hereby and thereby (including as a result of any termination of employment or Contract for services on or following the Closing) will (A) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance or termination pay, (B) accelerate the time of payment or vesting, or trigger any payment or funding (through a grantor trust or otherwise) of, compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any of the Company's Employee Benefit Plans or (C) result in any breach or violation of, or a default under, any of the Company's Employee Benefit Plans. The total amount of all payments and fair market value of all non-cash benefits (other than any amounts received in connection with the exercise, sale or cancellation of the Options) that may become payable or provided to any director, officer, employee or consultant of the Company (assuming for such purpose that such individual's employment or Contract for services were terminated immediately following the Closing Date as if the Closing Date were the date hereof) will not exceed the amount set forth in Schedule 4.13.

(h) No "payment in the nature of compensation" (as such term is defined in Section 280G(b) of the Code), whether in cash or property or the vesting of the right to receive cash or property, has been made or may be made to or for the benefit of any director, officer, employee, shareholder, independent contractor, or consultant of the Company that would be characterized as an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code), and no such Person is entitled to receive any additional payment from the Company or any other Person in the event that the excise tax required by Section 4999(a) of the Code is imposed on such first Person.

4.14. Taxes. (a) The Company has timely filed or caused to be filed with the appropriate taxing authorities all material Tax Returns required to be filed by it and any affiliated, combined, consolidated or unitary group of which the Company is or has been a member (for periods in which the Company was included in such affiliated, combined, consolidated or unitary group) (a "Company Tax Group") and has timely paid or caused to be paid all Taxes shown thereon as owing.

(b) All material Tax Returns filed by the Company and any Company Tax Group are true, correct and complete. No Encumbrances (other than Permitted Encumbrances) have been filed against the Company in respect of Taxes. The charges, accruals and reserves for current Taxes with respect to the Company reflected on the Company Audited Balance Sheet are adequate to cover all Tax liabilities payable or anticipated to be payable in respect of all periods or portions thereof ending on or before the date hereof.

(c) No outstanding or unresolved deficiency for any material Tax or claim for additional Taxes by any taxing authority has been proposed, asserted or assessed in writing against the Company and no audit, action, suit or claim is currently pending against the Company in respect of any Tax or assessment. To the knowledge of Sellers, no issue has been raised in any examination by any taxing authority with respect to the Company which, by application of similar principles, reasonably could be expected to result in a proposed deficiency or increase in Taxes for any other period not so examined.

(d) There are no outstanding agreements or waivers extending the statutory period of limitation applicable to any material Tax Returns required to be filed by or with respect

to the Company and neither the Company nor any Company Tax Group has requested any extension of time within which to file any material Tax Return (with respect to Tax Returns that have not yet been filed).

(e) The Company has withheld and paid all Taxes required by law to have been withheld and paid and has complied in all material respects with all rules and regulations relating to the withholding or remittance of Taxes (including, without limitation, employee related Taxes).

(f) The Company has not made with respect to the Company or any property held by the Company, any consent under Section 341 of the Code. No property of the Company is "tax exempt use property" within the meaning of Section 168(h) of the Code. The Company is not a party to any lease made pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954.

(g) The Company is not a party to any agreement, contract or arrangement that, individually or collectively, would give rise to any payment (whether in cash or property) that would not be deductible pursuant to Section 162(n) of the Code.

(h) The Company will not be required to recognize for Tax purposes in a taxable period beginning on or after the Closing Date any amount of income or gain which it would have been required to recognize under the accrual method of accounting in a taxable period ending on or before the close of business on the Closing Date as a result of the installment method of accounting, the completed contract method of accounting, the cash method of accounting or a change in method of accounting.

(i) The Company is not or has not been a member of an affiliated group (as that term is defined in the Code) filing a consolidated federal income Tax Return.

(j) No written, or to the knowledge of Sellers, oral claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to tax in that jurisdiction.

(k) The Company is not a party to any agreement or arrangement (written or oral), with Affiliates or unrelated parties, providing for the allocation or sharing of, or indemnity for, Taxes or Tax benefits and does not have any liability for Taxes of any Person under Treas. Reg. Section 1.1502-6, as transferee or successor, by contract or otherwise.

(l) The Company was not a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution qualifying for tax-free treatment under Section 355 of the Code (A) in the two (2) years prior to the date of this Agreement or (B) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

#### 4.15. Environmental

(a) To the knowledge of Sellers, the Company is in compliance with the Environmental Requirements applicable to it. No property (including soils, groundwater, surface water, buildings or other structures) currently or formerly owned or operated by the Company has been contaminated with any material amount of Hazardous Material during or, to the knowledge of Sellers, prior to the Company's ownership or operation. The Company has not disposed of, or arranged to dispose of, Hazardous Materials in a manner or to a location that could reasonably be expected to result in a Material Adverse Effect and is not subject to written claims for Hazardous Material disposal or continuation on any third-party property.

(b) To the knowledge of Sellers, the Company has not received any written notice, report or other information regarding any actual or alleged violation of Environmental Requirements applicable to it, or any liabilities or potential liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to the Company or its facilities arising under Environmental Requirements applicable to it.

#### 4.16. Business Insurance

Schedule 4.16 contains a complete and accurate list of all policies of fire, liability, product liability, workers' compensation, title and other forms of insurance owned, held by or applicable to the Company (or its assets or business), and the Company has heretofore delivered or made available to Purchaser a complete and accurate copy of all such policies, including all occurrence-based policies applicable to the Company (or its assets or business) for all periods prior to the Closing Date. All such policies (or substitute policies with substantially similar terms and underwritten by insurance carriers with substantially similar or higher ratings) are in full force and effect, all premiums due thereon have been paid, and no notice of cancellation or termination has been received with respect to any such policy. Such policies are sufficient for compliance by the Company with (i) all requirements of applicable laws and (ii) all Contracts to which the Company is a party. The Company has complied in all material respects with the provisions of each such policy under which it is an insured party. The Company has not been refused any insurance with respect to its assets or operations by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance, during the last four (4) years. There are no pending or, to the knowledge of Sellers, threatened claims under any insurance policy that individually or in the aggregate have had or could reasonably be expected to have a Material Adverse Effect.

4.17. Warranties; Product Liability; Product Liability Insurance. (a) The Company has not received any oral or written notice relating to any claim involving: (i) any product manufactured or sold, or any service provided, by the Company, resulting from any alleged breach of contractual requirements, express or implied, applicable thereto; (ii) any breach of any product warranty (whether express or implied), strict liability in tort, negligent design, specification, processing or manufacture of product or negligent provision of services, defective design, specification, processing or manufacture of product or failure to warn or absence of or defective warnings or instructions; or (iii) any alleged noncompliance with any applicable governmental, trade association or regulatory specifications or standards for any product manufactured or sold, or any service provided, by the Company. Except as disclosed on Schedule 4.17, no product or service manufactured, sold, leased, licensed or delivered by the

Company is subject to any express guaranty, warranty, right to return, right of credit or other indemnity.

(b) A policy providing insurance coverage to the Company as a named insured for product liability claims is maintained by Waldemar, a copy of which has been provided to Purchaser (the "Product Liability Insurance Policy"). As of the date hereof, such policy is in full force and effect and all premiums due thereon have been paid. The Company has not made any claim on such policy.

4.18. Status of Device. The Company has not received any notice with respect to any claim that the current design of the Device (without bioactive coating) will require significant alteration or redesign to maintain unconditional IDE approval. The term "significant alteration or redesign" as used in this section shall mean any alteration or redesign which significantly delays or is reasonably likely to significantly delay receipt of FDA Approval. The Purchaser has been provided with a detailed listing of all material information within the knowledge of Sellers which is relevant to the safety, effectiveness or performance of the Device, including all materials, technical, testing, manufacturing processes, performance, laboratory and clinical data related to the Device, the Clinical Study or the IDE and all material communications from the FDA with respect to the Device (without bioactive coating), the Clinical Study or the IDE or the requirements for the PMA Application, and has provided Purchaser with true and complete copies of all such information requested by Purchaser. As of the date of this Agreement, since the Semi-Annual Report submitted by Hogan & Hartson dated November 7, 2002, no serious, unanticipated adverse device effects have been reported in the IDE.

4.19. Compliance with Laws. The Company is, and since January 1, 2000 has been, in compliance with all applicable statutes, laws, ordinances, rules, regulations, judgments, orders and decrees applicable to its businesses or operations, except for such failures to be in compliance which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The Company has not received, since January 1, 2000, a notice or other written communication alleging a material violation by the Company of any applicable statute, law, ordinance, rule, regulation, judgment, order or decree applicable to its businesses or operations.

4.20. Transactions with Affiliates. Except as disclosed on Schedule 4.20(a), there are no Contracts between the Company, on the one hand, and any Seller or any Affiliate of any Seller (other than the Company), on the other hand. Except as set forth on Schedule 4.20(a), none of the Contracts specified on Schedule 4.20(a) will continue in effect after the Closing. None of the Sellers nor any other respective Affiliate (other than the Company) of any Seller (i) owns or has any interest in any property (real or personal, tangible or intangible), Intellectual Property Right or Contract used in or pertaining to the business of, the Company, or (ii) has any claim or cause of action against the Company. Except as disclosed on Schedule 4.20(b), neither HDL nor any of his Affiliates (other than LHC or the Company) has any direct or indirect ownership interest in any Person (other than the Company) with which the Company competes or has a business relationship.

4.21. Medical Device Regulation. (a) To the knowledge of Sellers, the Device has been designed and developed, and each of the Devices has been and is being manufactured and

distributed, in substantial compliance with all regulatory requirements and specifications applicable to the design, development, testing, manufacture, distribution, processing, storage, handling, and reporting of medical devices, including then-applicable quality system regulations (“QSR”) and then-applicable good laboratory practices (“GLP”) regulations, good clinical practices (“GCP”) regulations, and in compliance with all necessary licenses, exemptions, registrations, certifications, permits, authorizations, and/or approvals to manufacture and/or distribute the Device, periodic and annual reporting, and adverse event reporting, required by any statute, law, regulation, directive, or order of any Governmental Entity with jurisdiction over the Device or any requirement of any Notified Body that assessed the conformity of the Device to the Medical Devices Directive.

(b) Except as disclosed on Schedule 4.21, the Company and, to the knowledge of Sellers, each of its clinical investigators, have been and are complying in all material respects with all statutes, laws, regulations, directives, and regulatory requirements applicable to their respective activities relating to the IDE, including without limitation GLP regulations, GCP regulations, informed consent and investigational review board (“IRB”) requirements of 21 C.F.R. Parts 50 and 56, and the IDE requirements of 21 C.F.R. Part 812, and none of the clinical investigators in the Clinical Study has been or is disqualified, restricted, or otherwise sanctioned by FDA, the Department of Health and Human Services or any of its component agencies, or any IRB.

(c) All submissions made by or on behalf of Sellers, LHC or the Company or any of their Affiliates in connection with the Device to any Governmental Entity, Notified Body or clinical investigator contained data and information that were, and as of the Closing Date will be, accurate and complete in all material respects, including without limitation the IDE Application, submissions to FDA regarding the PMA Application, submissions to a Notified Body under the Medical Devices Directive, and submissions to regulatory authorities outside the United States.

(d) The Company has obtained and maintains in good standing all necessary licenses, exemptions, registrations, authorizations, and/or approvals to conduct the Clinical Study and other uses of the Device (without bioactive coating) under the IDE.

(e) The Company has obtained and maintains in good standing all necessary licenses, exemptions, registrations, certifications, permits, authorizations, and/or approvals to manufacture, distribute, label, market, test, promote and/or advertise the Device in the territories outside the United States where the Device has been or is being sold or offered for sale, marketed, or distributed, and has made all submissions in connection with the Device required by any Governmental Entity or Notified Body, including without limitation adverse event reports, except where the failure to so obtain or maintain or make submissions could not reasonably be expected to have a Material Adverse Effect.

(f) There have been no recalls, detentions, field notifications, corrections or removals, or seizures of any Device, or any component of the Device, undertaken voluntarily by the Company, or by the manufacturer of the Device, or by any component supplier, or ordered or, to the knowledge of Sellers, threatened by any Governmental Entity.

(g) Neither the Company nor the manufacturer of the Device has received any Warning Letter or FDCA Section 305 Notice from FDA, except as disclosed in Schedule 4.21.

(h) There have not been any written notices, citations, or published decisions by any Governmental Entity or Notified Body that the Device is defective or fails to meet any applicable regulations or standards issued or promulgated by any Governmental Entity, and to Sellers' knowledge, the Company and its Affiliates have not received any notice from any Governmental Entity or Notified Body that there exists any reasonable grounds for a claim of defectiveness or failure to meet any applicable regulation or standard.

(i) To the knowledge of Sellers, there have been no events that have had a material adverse effect on the conduct of the IDE.

(j) To the knowledge of Sellers, there are no past, pending, or threatened adverse claims or actions against the Company or any of its Affiliates in connection with the Device by any Governmental Entity.

4.22. Brokers' Fees; Payments to Others. Except with respect to Goldman, Sachs & Co., no broker, finder, investment bank or similar agent is entitled to any investment banking, brokerage, consulting, intermediary's or finder's fee in connection with the transactions contemplated by this Agreement and the Transaction Documents for which the LHC or the Company could be liable. The only payments required to be made by LHC or the Company to any Person due to the sale of LHC and the Company as contemplated by this Agreement or due to the receipt of FDA Approval (without the taking of any additional actions by either of them following the Closing) or as a royalty or profit participation interest are those listed on Schedule 4.22.

~~4.23. Accounts; Powers of Attorney; Officers and Directors. Schedule 4.23 sets forth~~  
(i) a true and complete list of all bank and savings accounts, certificates of deposit and safe deposit boxes of LHC and the Company, identifying each Person authorized to sign thereon,  
(ii) true and complete copies of all corporate borrowing, depository and transfer resolutions, identifying each Person entitled to act thereunder, (iii) a true and complete list of all powers of attorney granted by LHC and the Company, as the case may be, identifying with respect to each any Person authorized to act thereunder and (iv) a true and complete list of all officers and directors of each of LHC and the Company

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES RELATING TO LHC

HDL represents and warrants to Purchaser that:

5.01. Organization and Qualification of LHC; Non-Contravention. (a) LHC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. LHC has full power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to use its corporate name and to own, lease or otherwise hold its properties and assets and to carry on its business as

presently conducted other than such franchises, licenses, permits, authorizations and approvals the lack of which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business, assets, financial condition or results of operations of LHC. LHC is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership, leasing or holding of its properties makes such qualification necessary, except such jurisdictions where the failure to so qualify could not reasonably be expected to have a material adverse effect on the business, assets, financial condition or results of operations of LHC. A list of jurisdictions in which LHC is so qualified is set forth on Schedule 5.01(a). HDL has delivered to Purchaser true and complete copies of LHC's Certificate of Incorporation and By-laws, as amended to date. The stock certificate and transfer books and the minute books of LHC (which have been made available for inspection by Purchaser prior to the date hereof) are true and complete in all material respects.

(b) The execution and the delivery of this Agreement and the Transaction Documents do not, and the consummation of the transactions contemplated hereby or thereby will not, result in (i) a violation of or conflict with any provision of the Certificate of Incorporation or By-laws of LHC, (ii) a violation of any judgment, order or decree or statute, law, ordinance, rule or regulation to which LHC is subject or (iii) a breach of, or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any person under, or result in the creation of any Encumbrance upon any of the properties or assets of LHC under, any provision of any material Contract to which LHC is a party or by which any of its properties or assets are bound, other than, in the case of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business, assets, financial condition or results of operations of LHC.

5.02. Capital Stock of LHC. The authorized capital stock of LHC consists of [REDACTED] shares of common stock, par value [REDACTED] per share, all of which are issued and outstanding and are owned beneficially and of record by HDL and none of which has ever been owned beneficially or of record by any other Person. Other than such [REDACTED] shares of common stock, there are no shares of capital stock or other equity securities of LHC outstanding or reserved for issuance. The LHC Shares are duly authorized, validly issued, fully paid and nonassessable and have not been issued in violation of, and are not subject to, any purchase, option, call, right of first refusal, preemptive, subscription or other similar rights under any provision of applicable law, the Certificate of Incorporation or By-laws of LHC or any Contract to which LHC is subject, bound or a party or otherwise. There are no outstanding options, rights, "phantom" stock rights, warrants, agreements, convertible or exchangeable securities or other commitments (other than this Agreement) (i) pursuant to which HDL, LHC or any Affiliate of HDL or LHC is or may become obligated to issue, sell, purchase, return or redeem any shares of capital stock of LHC or, except as set forth in Schedule 5.02, the Company, and there are no equity securities of LHC reserved for issuance for any purpose or (ii) that give any person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to the holders of shares of capital stock of LHC. There are no outstanding bonds, debentures, notes or other indebtedness having the right to vote on any matters on which stockholders of LHC may vote.



5.03. Consents and Approvals. No approval, authorization, consent or other order or action of or filing with any Governmental Entity is required to be obtained or made by HDL or LHC in connection with the execution, delivery and performance of this Agreement by Sellers or the sale of the Shares to be sold by Sellers as contemplated hereby and the consummation of the other transactions contemplated by this Agreement and the other Transaction Documents, other than (x) the filing of all notices, reports and other documents required by, and the expiration or termination of all waiting periods under, the HSR Act and similar competition laws of those foreign countries set forth in Schedule 4.03, and (y) any other approval, authorization, consent or other order or action the failure of which to obtain could not reasonably be expected to have a material adverse effect on the business, assets, financial condition or results of operations of LHC.

5.04. Title; Other Equity Interests. Except as disclosed in Schedule 5.04, LHC has good and valid title to [REDACTED] shares of Common Stock, free and clear of Encumbrances. Other than such shares of Common Stock owned by it, LHC does not directly or indirectly currently own, and other than such shares and the capital stock of Link Orthopaedics, LHC has not in the past owned, any capital stock of or other equity interest in any Person and is not a member or a participant in any partnership, joint venture or similar Person.

5.05. Financial Statements; No Undisclosed Liabilities. (a) HDL has previously furnished LHC's audited balance sheets as of December 31, 2002, (the "LHC Audited Balance Sheet") and December 31, 2001, audited statements of operations and comprehensive loss and statements of cash flows for the one-year periods ended December 31, 2002 and December 31, 2001, together with the footnotes to such financial statements (together, the "LHC Audited Financial Statements"), true and complete copies of which are included in Schedule 5.05(a). The LHC Audited Financial Statements were prepared in accordance with the Applicable Accounting Principles and present fairly in all material respects the financial position, results of operations and cash flows of LHC as of the respective dates thereof and for the respective periods covered thereby.

(b) LHC has not engaged in any business activities of any type or kind, has never employed any Person or engaged any consultant (other than auditors) and does not have any obligations or liabilities of any kind whatsoever (whether accrued, absolute, contingent or otherwise), other than obligations or liabilities that are (x) obligations or liabilities of the Company that are determined to be owing by LHC as well or (y) disclosed in Schedule 5.05(b). LHC does not have any assets, other than the shares of Common Stock owned by it and its rights under the Link Orthopaedics Letter Agreement.

5.06. Taxes. (a) LHC has timely filed or caused to be filed with the appropriate taxing authorities all material Tax Returns required to be filed by LHC, each of its Subsidiaries other than the Company, which is subject to Section 4.15 (each such subsidiary, an "LHC Entity"), and any affiliated, combined, consolidated or unitary group of which either LHC, the Company or any LHC Entity is or has been a member (for periods in which LHC, the Company or any Subsidiary was included in such affiliated, combined, consolidated or unitary group) (a "LHC Tax Group") and has timely paid or caused to be paid all Taxes shown thereon as owing.

(b) All material Tax Returns filed by LHC, any LHC Entity and any LHC Tax Group are true, correct and complete. No Encumbrances (other than Permitted Encumbrances) have been filed against LHC or any LHC Entity in respect of Taxes. The charges, accruals and reserves for current Taxes with respect to LHC and the LHC Entities reflected on the LHC Audited Balance Sheet are adequate to cover all Tax liabilities payable or anticipated to be payable in respect of all periods or portions thereof ending on or before the date hereof.

(c) No outstanding or unresolved deficiency for any material Tax or claim for additional Taxes by any taxing authority has been proposed, asserted or assessed in writing against LHC or any LHC Entity and no audit, action, suit or claim is currently pending against LHC or any LHC Entity in respect of any Tax or assessment. To the knowledge of Sellers, no issue has been raised in any examination by any taxing authority with respect to LHC or any LHC Entity which, by application of similar principles, reasonably could be expected to result in a proposed deficiency or increase in Taxes for any other period not so examined.

(d) There are no outstanding agreements or waivers extending the statutory period of limitation applicable to any material Tax Returns required to be filed by or with respect to LHC or any LHC Entity and none of LHC, any of the LHC Entities or any LHC Tax Group has requested any extension of time within which to file any material Tax Return (with respect to Tax Returns that have not yet been filed).

(e) LHC and each LHC Entity has withheld and paid all Taxes required by law to have been withheld and paid and has complied in all respects with all rules and regulations relating to the withholding or remittance of Taxes (including, without limitation, employee-related Taxes).

(f) None of LHC or any LHC Entity has made with respect to LHC or any LHC Entity or any property held by LHC or any LHC Entity, any consent under Section 341 of the Code. No property of LHC or any of the LHC Entities is "tax exempt use property" within the meaning of Section 168(h) of the Code. None of LHC or any LHC Entity is a party to any lease made pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954.

(g) Neither LHC nor any LHC Entity is a party to any agreement, contract or arrangement that, individually or collectively, would give rise to any payment (whether in cash or property) that would not be deductible pursuant to Section 162(n) of the Code.

(h) None of LHC or any of the LHC Entities will be required to recognize for Tax purposes in a taxable period beginning on or after the Closing Date any amount of income or gain which it would have been required to recognize under the accrual method of accounting in a taxable period ending on or before the close of business on the Closing Date as a result of the installment method of accounting, the completed contract method of accounting, the cash method of accounting or a change in method of accounting.

(i) None of LHC or any of the LHC Entities is or has been a member of an affiliated group (as that term is defined in the Code) filing a consolidated federal income Tax Return.

(j) No written, or to the knowledge of HDL or LHC, oral claim has ever been made by an authority in a jurisdiction where LHC or any LHC Entity does not file Tax Returns that LHC or any LHC Entity is or may be subject to tax in that jurisdiction.

(k) None of LHC or any of the LHC Entities is a party to any agreement or arrangement (written or oral), with Affiliates or unrelated parties, providing for the allocation or sharing of, or indemnity for, Taxes or Tax benefits and does not have any liability for Taxes of any Person under Treas. Reg. Section 1.1502-6, as transferee or successor, by contract or otherwise.

(l) None of LHC or any LHC Entity was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution qualifying for tax-free treatment under Section 355 of the Code (A) in the two years prior to the date of this Agreement or (B) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

5.07. Insurance. Each Affiliate of HDL has complied in all material respects with the provisions of each insurance policy listed on Schedule 4.16 owned, held by or applicable to it (or its assets or business).

5.08. Distribution Agreements. Neither HDL nor any of his Affiliates (other than the Company) has a binding distribution arrangement with respect to the Device or is under any binding obligation to supply any Person with the Device for distribution. There is no Contract between HDL or any of his Affiliates, on the one hand, and any third-party distributor or Affiliate distributor, on the other hand, which, after the Closing, covers the Device or any Intellectual Property Rights of the Company. The Company has no liability for any sales of the Device sold pursuant to, or any other obligation or liability under, any such Contract in effect prior to the Closing.

5.09. Powers of Attorney and Custody Agreements. The form of this Agreement and the Escrow Agreement included as an exhibit to the powers of attorney and custody agreements entered into in contemplation of this transaction with the Company Stockholders (collectively, the "Powers of Attorney") are not materially different from the provisions contained in this Agreement and the Escrow Agreement. This Agreement and the Escrow Agreement are in substantially the form attached to each of the Powers of Attorney with such changes, modifications or amendments as HDL, in his role as "Custodian" under the Powers of Attorney, deems advisable. The transactions contemplated by this Agreement are a "Proposed Transaction" as defined in the Powers of Attorney. Each other agreement, document or instrument executed or delivered on behalf of any Seller pursuant to a Power of Attorney will be, upon the execution and delivery thereof, duly authorized by the relevant Power of Attorney to be so executed and delivered by HDL in such capacity.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers that:

6.01. Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

6.02. Authorization. Purchaser has the full power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. All corporate acts and other proceedings required to be taken by or on the part of Purchaser to authorize such execution, delivery, performance and consummation have been duly and properly taken. This Agreement has been duly executed and delivered by Purchaser and constitutes, and such other Transaction Documents when duly executed and delivered by Purchaser will constitute (assuming that this Agreement and each other such Transaction Document to be executed by Purchaser pursuant hereto will constitute a legal, valid and binding obligation of such other Person or Persons party hereto and thereto), legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights, general equitable principles and an implied covenant of good faith and fair dealing.

6.03. Non-Contravention. Neither the execution and the delivery of this Agreement and the Transaction Documents to which Purchaser is a party, nor the consummation of the transactions contemplated hereby or thereby will, result in (i) a violation of or conflict with any provision of the Certificate of Incorporation or By-laws of Purchaser, (ii) a violation of any judgment, order or decree, or statute, law, ordinance, rule or regulation to which Purchaser is subject or (ii) a breach of, or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Encumbrance upon any of the properties or assets of Purchaser under, any provision of any material Contract to which Purchaser is a party or by which any of its properties or assets are bound, other than, in the case of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, could not reasonably be expected to prevent, materially delay or materially impair the consummation by Purchaser of the transactions contemplated by this Agreement and the other Transaction Documents.

6.04. Consents and Approvals. No approval, authorization, consent or other order or action of or filing with any Governmental Entity is required to be obtained or made by Purchaser in connection with the execution, delivery and performance of this Agreement by Purchaser or the sale of the Shares to be sold by Sellers as contemplated hereby and the consummation of the other transactions contemplated by this Agreement and the other Transaction Documents, other than (x) the filing of all notices, reports and other documents required by, and the expiration or termination of all waiting periods under, the HSR Act and (assuming that Schedule 4.05(c) is

true and correct) similar competition laws of foreign countries set forth in Schedule 4.03, and (y) any other approval, authorization, consent or other order or action the failure of which to obtain could not reasonably be expected to prevent, materially delay or materially impair the consummation by Purchaser of the transactions contemplated by this Agreement and the other Transaction Documents.

6.05. Available Funds. Purchaser has, and will have on the Closing Date, without requiring the prior consent, approval or other discretionary action of any unaffiliated third party, a sufficient amount of cash to pay the full amount of the Closing Date Purchase Price and to satisfy any other obligations hereunder and in connection with the transactions contemplated hereby on the terms and conditions set forth herein.

6.06. No Legal Proceedings. There is no action, suit, order, judgment or proceeding pending or threatened against or affecting Purchaser that, individually or when aggregated with one or more other actions, suits, orders, judgments or proceedings, has or could reasonably be expected to prevent, materially delay or materially impair the consummation by Purchaser of the transactions contemplated by this Agreement and the other Transaction Documents.

6.07. Securities Act of 1933. The Shares to be purchased by Purchaser pursuant to this Agreement are being acquired for investment only and not with a view to any public distribution thereof, and Purchaser will not offer to sell or otherwise dispose of the Shares so acquired by it in violation of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or the applicable state securities laws of any state.

6.08. Investigation; No Additional Representations; No Reliance, etc. The Purchaser acknowledges and agrees that it (a) has made its own inquiry and investigation into, and based thereon has formed an independent judgment concerning, LHC and the Company, (b) to the extent it has deemed appropriate, has addressed in this Agreement any matters arising out of its investigation and the information provided to it, and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its purchase of the Shares.

6.09. Brokers' Fees. Purchaser has not employed any broker, finder, investment bank or similar agent in connection with the transactions contemplated by this Agreement which would be entitled to any brokerage or finder's fee for which Sellers could be liable.

## ARTICLE VII

### FURTHER COVENANTS AND AGREEMENTS

7.01. Conduct of Business of LHC and the Company. Except as otherwise contemplated by this Agreement or the other Transaction Documents, and except as set forth on Schedule 7.01 or consented to in advance and in writing by Purchaser, from and after the date hereof and until the Closing, Sellers shall (a) cause LHC and the Company to each operate their respective businesses only in the ordinary course consistent with past practice in all material respects except that HDL shall only be obligated to lend money to the Company to the extent provided in the next sentence of this Section 7.01, (b) promptly notify Purchaser of any material

adverse change in the business, assets, condition (financial or otherwise), liabilities (contingent or otherwise) or results of operations of LHC or the Company, as the case may be, (c) make all commercially reasonable efforts consistent with past practices to keep the physical assets of each of LHC and the Company in good working condition, to preserve, maintain the value of, renew, extend and keep in full force and effect all Intellectual Property Rights of each of LHC and the Company, to keep available the services of the current officers and employees of each of LHC and the Company, and (d) sustain investment in its clinical and commercial activities in the ordinary course of business consistent with past practice (it being understood that, subject to the next sentence, none of the foregoing shall be deemed to necessitate any capital contributions or loans to the Company from any of the Sellers or any of their Affiliates) and (e) comply in all material respects with all applicable statutes, laws, ordinances, rules, regulations, judgments, orders and decrees). Until the Closing, HDL shall continue to loan cash to the Company in an amount sufficient for the Company to satisfy its obligations as they become due in the ordinary course of business, such loans being on terms consistent with past practice and to be included in the Company Closing Date Debt Obligation Amount and covered by the covenant set forth in clause (v) below prohibiting repayment thereof prior to the Closing. Without limiting the generality of the foregoing and except as otherwise contemplated by this Agreement, the Transaction Documents or as set forth on Schedule 7.01, from and after the date hereof and until the Closing, Sellers will cause each of LHC and the Company not to do any of the following without the prior written consent of Purchaser:

- (i) amend its Certificate of Incorporation or By-laws;
- (ii) purchase, redeem or otherwise acquire any shares of its capital stock or issue any capital stock or any option, warrant or right relating thereto;
- (iii) declare, set aside or pay any dividend on, or make any other distribution in respect of, outstanding shares of its capital stock;
- (iv) except as required to ensure that any of the Company's Employee Benefit Plans is not then out of compliance with applicable law or to comply with any Contract entered into prior to the date hereof (complete and accurate copies of which have been heretofore delivered to Purchaser), (A) adopt, enter into, terminate or amend any Benefit Agreement or policy involving the Company and one or more of their respective current or former directors, officers, employees or consultants, (B) increase in any manner the compensation, bonus or fringe or other benefits of, or pay any bonus of any kind or amount whatsoever to, any current or former director, officer, employee or consultant, except for any planned salary increases and payment of bonuses, each as described in Schedule 7.01, (C) pay any benefit or amount not required to be paid under any of the Company's Employee Benefit Plans or any other benefit plan or arrangement of the Company as in effect on the date of this Agreement, other than as contemplated in clause (B), (D) grant or pay any severance or termination pay or increase in any manner the severance or termination pay of any current or former director, officer, employee or consultant of the Company, (E) grant any awards under any bonus, incentive, performance or other compensation, plan or arrangement or Employee Benefit Plan (including the grant of stock options or restricted stock of the Company), other than as contemplated in clause (B), (F) amend or modify any stock option or warrant to purchase

shares of capital stock of the Company, (G) take any action to fund or in any other way secure the payment of compensation or benefits under any employee plan, agreement, contract or arrangement or Employee Benefit Plan unless required by applicable law or the terms thereof as in effect on the date hereof, or (H) take any action to accelerate the vesting or payment of any compensation or benefit under any Employee Benefit Plan;

(v) repurchase, prepay or pay any amount due on, and other than as expressly provided by the second sentence of Section 7.01, incur or assume or suffer to exist any indebtedness or guarantee of indebtedness, other than payments of interest due in the ordinary course of business consistent with past practice, issue or sell, or amend, modify or change any term of, any debt securities or options, warrants, calls or other rights to acquire any debt securities of either LHC or the Company, make any loans, advances or capital contributions to, or investments in, any Person or enter into any "keep well" or other Contract to maintain any financial statement condition of another Person or enter into any Contract having the economic effect of any of the foregoing;

(vi) cancel any material indebtedness or guarantees of indebtedness owed to LHC or the Company, other than in the ordinary course of business consistent with past practice;

(vii) make any material change in any method of accounting or accounting practice, principle or policy, change its fiscal year, revalue any of its material assets or make or change any material Tax election or change any tax accounting method relating to LHC or the Company;

(viii) acquire or agree to acquire by merging or consolidating with, or by purchasing all or substantially all of the assets or capital stock of, or by any other manner, any other Person (or division thereof);

(ix) (A) sell, license, mortgage, lease or otherwise encumber or subject to any Encumbrance, other than a Permitted Encumbrance, or otherwise dispose of, or agree to sell, lease or otherwise dispose of, any of its assets which are material, individually or in the aggregate, to LHC or the Company, or (B) acquire any assets which are material, individually or in the aggregate, to either LHC or the Company;

(x) enter into any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);

(xi) modify, amend, terminate or fail to exercise any right to renew any lease or sublease of, or other material agreement pertaining to, real property (except modifications or amendments associated with renewals of leases in the ordinary course of business);

(xii) incur or commit to incur any capital expenditures or purchases of machinery and equipment (or in either case any obligation or liability in connection therewith) in excess of \$100,000 in the aggregate;

(xiii) split, combine or reclassify any of the capital stock of LHC or the Company, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of capital stock of LHC or the Company;

(xiv) issue, deliver or sell, or pledge or otherwise encumber, any shares of capital stock of LHC or the Company, or any securities convertible into, or exchangeable for, or any options, warrants, calls or rights to acquire or receive, any such shares, interests or other securities or any stock appreciation rights, phantom stock awards or other rights that are linked in any way to the price of the capital stock of LHC or the Company or to the value of LHC or the Company or any part of LHC or the Company;

(xv) enter into any Contract (A) of the type required to be disclosed on Schedule 4.11, (B) if the consummation of the transactions contemplated by this Agreement and the Transaction Documents or compliance by LHC or the Company with the provisions of this Agreement and, as applicable, the Transaction Documents will conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) under, or give rise to a right of, result in, the termination, cancellation or acceleration of any obligation or to a loss of a benefit under, or result in the creation of any Encumbrance in or upon any of the properties or assets of any of LHC, the Company or Purchaser or any of Purchaser's Affiliates under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, any provision of such Contract or (C) containing any restriction on the ability of LHC or the Company to assign all or any portion of its rights, interests or obligations thereunder, unless such restriction expressly permits any assignment to Purchaser and Purchaser's Affiliates in connection with or following the consummation of the transactions contemplated by this Agreement and the Transaction Documents;

(xvi) terminate, amend, modify or otherwise in any way alter (or grant any additional approvals under) the Supply Agreement, the Qualified Contractor Agreement, the Qualified Contractor Assignment, the Clarification Agreement, the Hold Harmless Agreement (other than as provided for in Section 7.20 hereof), the Amended and Restated Hold Harmless Agreement (if such agreement is entered into pursuant to Section 7.20), the DOT Assignment, the Revenue Allocation Letter, the Option Letters and the amendment, dated as of the date hereof, to the amended executive employment agreement between the Company and [REDACTED] dated October 1, 2001;

(xvii) commence, participate or agree to commence or participate in any bankruptcy, voluntary liquidation, dissolution, winding up, examinership, insolvency or similar proceeding in respect of LHC or the Company;

(xviii) create or own any Subsidiary other than, with respect to LHC, the Company; or

(xix) enter into any agreement to do any of the foregoing.



7.02. Access; Information; Confidentiality. Except as necessary to comply with applicable Laws relating to the exchange of information and any confidentiality or similar requirements relating to the Clinical Study imposed under informed consent regulations, statute or by the FDA, from and after the date hereof and until the Closing Date, Sellers shall, and shall cause the Company to, and HDL shall, and shall cause LHC to, (a) afford to the officers, employees, attorneys, accountants and other authorized representatives of Purchaser (the "Purchaser Representatives") reasonable access, during normal business hours and with reasonable notice, to the offices, plants, properties, employees, books and records of LHC and the Company; (b) help gain reasonable access for the Purchaser Representatives, at such times as the Purchaser Representatives may reasonably request, to LHC's and the Company's licensors, licensees, employees, contractors, distributors, vendors, clients, customers, suppliers, Affiliates or other Persons having a material business relationship with LHC or the Company; and (c) otherwise assist the Purchaser Representatives in becoming familiar with the Company's existing and prospective businesses and assets and liabilities to such extent and at such times as the Purchaser Representatives may reasonably request; provided, however, that none of the foregoing shall unreasonably disrupt the personnel and operations of LHC or the Company, as the case may be. Purchaser covenants and agrees, and shall cause each of the Purchaser Representatives to, treat all such information obtained or developed by them, including such information relating to LHC, confidential in accordance with the terms of that certain Confidentiality Agreement, entered by and between Purchaser and the Company (the "Confidentiality Agreement"). From and after the Closing Date, until the date that is the three-year anniversary of the Closing Date, each Seller covenants and agrees, and shall cause its attorneys, accountants and other representatives to, treat all information obtained pursuant to Section 2.04(b), including, without limitation, any documentation or work papers of Purchaser reflecting Purchaser's determination of Net Sales of the Device, confidential.

7.03. Efforts; Consents and Conditions to Closing. Each of the parties hereto agrees to use its commercially reasonable efforts to (i) obtain (and to cooperate with each other in obtaining) all consents, authorizations, orders, exemptions, permits, licenses, estoppel certificates and approvals of any third parties, including Governmental Entities, required to be obtained by it in connection with any of the transactions contemplated hereby or in any of the Transaction Documents, (ii) ensure that the conditions to the obligations of the other parties to consummate the transactions contemplated hereby are satisfied, (iii) comply promptly with all legal requirements which may be imposed on or applicable to it with respect to the Closing (including using commercially reasonable efforts to furnish all information required under the HSR Act or similar competition laws of those foreign countries set forth on Schedule 6.04), (iv) promptly cooperate with and furnish information to each other in connection with any such legal requirements and (v) take all other actions necessary or advisable to permit the consummation of the transactions contemplated by this Agreement and the Transaction Documents expeditiously. Sellers and Purchaser each promptly (but in no event later than ten (10) Business Days) after the execution and delivery of this Agreement, shall file their completed premerger notification report under the HSR Act and shall use their commercially reasonable efforts to cause the expiration or termination of the applicable waiting period under the HSR Act. Notwithstanding the foregoing, nothing in this Section 7.03 shall be deemed to require Purchaser to execute or carry out agreements providing for (A) the prohibition or limitation of the ownership or operation by Purchaser, LHC, the Company or any of their respective Affiliates of any portion of the business or assets of Purchaser, LHC, the Company or any of their respective Affiliates, or compelling the

sale or other disposition or holding separate of any portion of the business or assets of Purchaser, LHC, the Company or any of their respective Affiliates, or the holding separate of the Common Stock or any of the Shares, (B) the imposition of limitations on the ability of Purchaser or its Affiliates to acquire, or hold or exercise full rights of ownership of, the Shares, including the right to vote the Shares on all matters properly presented to the stockholders of LHC or the Company or (C) the sale or other disposition or holding separate of any portion of the business or assets of Purchaser, the Company or any of their respective Affiliates, or the holding separate of the Common Stock or imposing any prohibition on the ability of Purchaser or any of its Affiliates to effectively control in any respect the business or operations of LHC or the Company after Closing.

7.04. Notification of Certain Matters. (a) Sellers shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Sellers, as the case may be, of (i) any knowledge of or discovery by the notifying party of the inaccuracy of any representation or warranty by the non-notifying party contained in this Agreement, (ii) the receipt of any written notice from any Governmental Entity that could be reasonably expected to cause the notifying party to fail to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by such party under this Agreement and (iii) the occurrence of any other event or condition or the existence of any fact that would cause any of the conditions to the obligation of the other party in Article VIII or IX, as applicable, to not be satisfied.

(b) Sellers shall cause to be delivered prior to Closing to Purchaser, (i) on a weekly basis, a listing of all unanticipated adverse device effects received by the Company or any of its Affiliates during such week, (ii) once every two weeks, a listing of adverse event reports relating to the Device received by the Company or any of its Affiliates during such two week period and (iii) from time to time, upon the reasonable request of Purchaser, a copy of the complaint file of the Company.

7.05. Agreement Regarding Link Name. During the period commencing on the six-month anniversary of the Closing Date and ending at the close of business on the ten-year anniversary of the Closing Date, Purchaser will take all necessary actions to change the names of LHC and the Company to remove the word "Link" and Purchaser shall cease to use the name "Link" in connection with the name of the Device, or in the name of any entity involved in the manufacturing, marketing or selling of the Device; provided, however, that (i) Purchaser may continue using the word "Link" in connection with the sale or other disposition of any inventory of the Company existing on the Closing Date and any related packaging or promotional materials bearing the "Link" name, (ii) Purchaser may, for so long as the Supply Agreement is in effect, continue using the word "Link" in connection with the sale or other disposition of any Device manufactured pursuant to the Supply Agreement to the extent Purchaser is required to list the manufacturer of the Device on the Device or any related packaging or promotional materials and (iii) Purchaser or its Affiliates (including, from and after the Closing, LHC and the Company) may use the word "Link" in connection with any required filings with any Governmental Entities or in order to comply with any judgment, order or decree or statute, law, ordinance, rule or regulation to which Purchaser or its Affiliates (including, from and after the Closing, LHC and the Company) is subject.

the particular jurisdiction in which such determination is made. It is expressly understood and agreed that, although HDL and Purchaser each consider the restrictions contained in Section 7.06 to be reasonable, if a final determination is made by a court of competent jurisdiction or an arbitrator that the time or territory or any other restriction contained in this Section 7.06 is unenforceable against any party, the provisions of this Section 7.06 shall be deemed amended to apply as to such maximum time and territory and to such maximum extent as such court may judicially determine or indicate to be enforceable.

(e) The parties acknowledge that each party's damages at law would be an inadequate remedy for the breach by HDL of any provision of this Section 7.06, and agree in the event of such breach that Purchaser may obtain temporary and permanent injunctive relief restraining HDL from such breach. Nothing contained in this Agreement shall be construed as prohibiting Purchaser from pursuing other remedies available at law or equity for such breach or threatened breach of this Section 7.06.

(f) The parties acknowledge and agree that the restrictions contained in this Section 7.06 (other than the provisions of paragraph (c) hereof to the extent provided therein) are not intended to restrict the designing, development, marketing or selling of any product relating to, and no product shall be considered a Competitive Product if such product relates to, any region of the spine other than the lumbar region.

7.07. Insurance. Sellers shall cause LHC and the Company or their respective Affiliates, as applicable, to keep all insurance policies set forth on Schedule 4.16, or comparable replacements therefor, in full force and effect through the Closing so that such insurance policies will be in full force and effect immediately following the Closing.

7.08. Resignations. On the Closing Date, Sellers shall cause to be delivered to Purchaser duly signed resignations, effective upon the Closing, of all directors and officers of LHC and the Company, and shall take such other action as is necessary to accomplish the foregoing.

7.09. Exclusivity. (a) From the date of this Agreement through the Closing Date, Sellers shall not, and shall not permit LHC, the Company or any of their respective Affiliates, officers, directors, stockholders or representatives to, directly or indirectly, encourage, solicit, initiate, participate or otherwise facilitate any inquiry, proposal, offer, discussion or negotiation with, or provide any information or assistance to, any Person or group (other than Purchaser and the Purchaser Representatives in their capacities as representatives of Purchaser) concerning any merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution, sale of any securities, sale of material assets or any similar transaction involving either LHC or the Company.

(b) If any of the Persons listed in Section 7.09(a) receives any inquiry, proposal or offer of the nature described in Section 7.09(a), then Sellers shall, within two Business Days thereafter, notify Purchaser in writing of such inquiry, proposal or offer, indicating the name of the Person making the inquiry, proposal or offer and the material terms, conditions and other aspects of such inquiry, proposal or offer, including a copy of any written materials received from such Person making the inquiry, proposal or offer.

7.10. Tax Matters. (a) LHC shall timely prepare and file and shall cause each Subsidiary to timely prepare and file any Tax Return of LHC or any Subsidiary required to be filed on or before the Closing Date (a "Pre-Closing Tax Return") and timely pay any Tax reflected thereon. All Pre-Closing Tax Returns shall be filed in accordance with applicable law and consistent with past practice.

(b) Purchaser will prepare any Tax Return of LHC and any Subsidiary that includes a Pre-Closing Tax Period and that is required to be filed after the Closing Date (a "Post-Closing Tax Return") and, subject to Sellers' indemnification obligations pursuant to Section 11.09, pay any such Tax reflected thereon. Purchaser shall provide the Seller Representative with a copy of any U.S. federal income Tax Return that relates solely to a Pre-Closing Tax Period and any state income tax return that includes a Pre-Closing Tax Period, no later than fifteen (15) days before the due date (or, if later, the filing date) of such Tax Return. All Post-Closing Tax Returns shall be filed in accordance with applicable law and consistent with past practice where not unreasonable. Purchaser shall permit Sellers to review and comment on each U.S. federal income Tax Return that relates solely to a Pre-Closing Tax Period and each state income Tax Return that includes a Pre-Closing Tax Period prior to filing and either shall make revisions requested by Sellers or if Purchaser and Sellers cannot reach an agreement, the issue will be submitted to an arbitration conducted by a mutually agreed upon nationally recognized accounting firm.

(c) All transfer, documentary, sales, use, registration and other such Taxes (including all applicable real estate transfer or gains Taxes) and related fees (including any penalties, interest and additions to Tax) ("Transfer Taxes") imposed by the U.S. or any state or local tax authority thereunder incurred in connection with this Agreement and the transactions contemplated hereby shall be borne equally by Sellers, on the one hand, and Purchaser, on the other hand, and Sellers and Purchaser shall cooperate in timely making all Tax Returns as may be required to comply with the provisions of such Tax laws. The parties agree to reasonably cooperate with each other to lawfully minimize any such Taxes. Any Transfer Taxes imposed by a non-U.S. tax authority shall be borne by Sellers.

(d) From the date hereof through the Closing Date, none of LHC or any of its Subsidiaries shall effect any transactions outside the ordinary course of business that could result in Tax liability to LHC or any of its Subsidiaries in excess of Tax liability associated with the conduct of its business in the ordinary course.

(e) Notwithstanding anything in this Agreement to the contrary, Purchaser, LHC and any Subsidiary of LHC shall be entitled to deduct and withhold from any amounts payable pursuant to this Agreement such amounts as Purchaser, LHC or such Subsidiary is required to deduct and withhold under the Code and the rules and regulations promulgated thereunder, or any other provision of applicable law. In the case of such withholding being applicable, Sellers may apply for a reduction of rate of withholding under any applicable tax treaty and, provided that Sellers provide a properly executed Form W-8BEN to Purchaser, LHC or a Subsidiary of LHC, as the case may be, before any payment is due, Purchaser, LHC or the relevant Subsidiary shall apply the reduced rate accordingly. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having

been paid to the Sellers. Subject to Section 7.10(c), Sellers shall pay any and all Taxes levied on account of, or measured exclusively by, all payments they receive under this Agreement.

(f) Notwithstanding the Confidentiality Agreement or anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure; provided, however, that no Seller (or its employees, representatives, or agents) shall disclose any information that is not relevant to an understanding of the tax treatment and tax structure of the transactions contemplated by this Agreement, including the identity of any party to this Agreement (or its employees, representatives or agents).

7.11. Additional Agreements. (a) At the Closing, HDL shall cause the Company and Link Orthopaedics to, execute and deliver a transition services agreement in the form attached hereto as Exhibit B (the "Transition Services Agreement").

(b) Purchaser and the Seller Representative agree to enter into the Escrow Agreement prior to the Closing with the Escrow Agent.

7.12. Records. On or prior to the Closing Date, Sellers shall insure that the Company possesses all agreements, documents, books, records and files, including records and files stored on computer disks or tapes or any other storage medium in the possession of Sellers or their Affiliates, relating to the business and operations of LHC or the Company.

7.13. Exercise of the Options. Each Optionholder agrees that prior to, or concurrently with, the Closing, it shall exercise in full the Options held by it, which may occur by causing HDL to exercise such Options pursuant to authority granted by such Optionholder to HDL, in which case HDL shall cause the same to occur. No later than concurrently with the Closing, the Company shall cause all Options to be vested and exercisable in full and shall duly issue all the Option Shares issuable to the Optionholders upon such exercise and register on the stock transfer books of the Company the transfer of shares of Company Stock sold by LHC pursuant to the applicable Options (and in such case issue new stock certificates registered in the name of [REDACTED]). Each Optionholder further agrees to sell, deliver and otherwise transfer such Optionholder's Option Shares to Purchaser in accordance with the terms of this Agreement, and hereby authorizes the Seller Representative (and the Seller Representative hereby agrees) to exercise such Optionholder's Options and sell, deliver and otherwise transfer such Option Shares.

7.14. Payment of Deal Payment Obligations. Purchaser hereby covenants and agrees to cause to be paid any Deal Payment Obligations (other than the Closing Date Deal Payment Obligations, which shall be paid at Closing pursuant to Section 2.02(a) hereof) owed by the Company, subject to any required tax withholding, within ten (10) Business Days from the date on which such obligations become payable.

7.15. Matters Relating to the PMA Application. (a) Sellers shall cause the Company to timely pay the invoice received from the FDA relating to the user fee for the PMA Application as soon as practicable following receipt of such invoice.

(b) Sellers shall not permit the manufacturer or any contract or component manufacturer named in the PMA Application to be changed under the PMA Application without the prior written consent of Purchaser.

7.16. Matters Relating to the Clinical Study and IDE. From the date hereof through the Closing Date, HDL shall cause the Company or any relevant Affiliate of HDL to continue to perform its current functions and responsibilities with respect to the Clinical Study or the IDE, which functions and responsibilities shall not be further delegated prior to Closing, and not to terminate, amend or modify any Contract with any contract research organization with respect to the Clinical Study and the IDE.

7.17. Matters Relating to the CE-Mark. From the date hereof through the Closing Date, HDL shall cause the Company or any applicable Affiliate of HDL that manufactures and distributes the Device to perform the quality system functions and activities necessary (a) to assure compliance with the Medical Devices Directive with respect to the Devices and (b) to assure that the relevant Notified Body agrees that the CE-mark continues to be lawfully and properly affixed to the Devices.

7.18. Payment to Professor Schellnack. HDL shall cause to be paid to Professor Schellnack the remaining payments (estimated to be approximately [REDACTED]) owed pursuant to the [REDACTED] 2002 Contract upon demand (and in any event within five (5) years from the date of such [REDACTED] 2002 Contract). HDL shall notify Purchaser within two (2) Business Days in the event of any such demand and shall provide evidence of such payments to Purchaser within two (2) Business Days of such payment.

7.19. Further Covenants of HDL. (a) From the date hereof through the Closing Date, HDL shall not and shall cause his Affiliates not to distribute or sell the Device to any non-Affiliate distributor other than in the ordinary course of business consistent with past practice.

(b) From the Closing Date, HDL shall cause all Affiliate distributors (excluding, in any event, [REDACTED]) to sell to the Company (or a designee of the Company), within thirty (30) calendar days of the Closing Date, all Devices and components or instruments related thereto held by such Affiliate distributors at the prices set forth in the Supply Agreement.

(c) HDL shall not and shall cause his Affiliates not to, use the Patents listed on Schedule 4.09(a)(ii) under the heading "Plastic Implant with Channel for Radiographic Contrast Wire" in connection with any artificial disc device for the human cervical spine during the life of such Patents.

7.20. Hold Harmless Agreement. Sellers shall cause the Company to use best efforts (provided that in connection therewith Sellers shall not be obligated to pay any amounts in excess of [REDACTED] in the aggregate) to amend and restate the Hold Harmless Agreement and to enter into a revised agreement substantially in the form of the agreement included in Schedule 7.20, with such changes therein as may be requested by HDI so long as such changes do not

materially reduce the rights of, and benefits to, the Company from those rights and benefits reflected in such attached form (such amended and restated hold harmless agreement entered into pursuant to this Section 7.02, if any, the "Amended and Restated Hold Harmless Agreement"). In the event that, despite such efforts, the Company does not enter into such a revised agreement prior to Closing, Purchaser hereby agrees that the Company shall, notwithstanding anything to the contrary contained herein, have the right to terminate the Hold Harmless Agreement at Closing.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

All obligations of Purchaser to effect the Closing hereunder shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any or all of which may be waived with respect to Purchaser by Purchaser in its sole discretion:

8.01. Performance by Sellers. All the terms, covenants, agreements and conditions of this Agreement to be complied with and performed by Sellers on or before the Closing shall have been complied with and performed in all material respects prior to or on the Closing Date.

8.02. Representations and Warranties. The representations and warranties made by Sellers in this Agreement qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date, except for those representations and warranties which address matters only as of a particular date (which shall be true and correct if qualified as to materiality and shall be true and correct in all material respects if not so qualified, in each case as of such date).

8.03. No Injunctions; Litigation. There shall not be (i) in effect any statute, rule, regulation, executive order, decree, restraining order, preliminary or permanent injunction or other order enacted, promulgated, enforced or issued by any Governmental Entity which prohibits the consummation of the sale and purchase of the Shares pursuant to this Agreement or any of the other transactions contemplated by this Agreement or any of the Transaction Documents or (ii) any pending, or to the knowledge of Sellers, threatened, suit, action or proceeding by any Governmental Entity (or by any other Person any suit, action or proceeding which has a reasonable likelihood of success) challenging or seeking to restrain or prohibit the consummation of the sale and purchase of the Shares pursuant to this Agreement or any of the other transactions contemplated by this Agreement or any of the Transaction Documents.

8.04. Governmental Approvals. All filings listed on Schedule 4.03 shall have been made and all consents or authorizations of Governmental Entities necessary for the consummation of the transactions contemplated hereby set forth in Part I of Schedule 4.03 shall have been obtained, and any applicable waiting period under the HSR Act, including any extensions of such waiting period, shall have expired or been terminated.

8.05. Sellers' Certificate. Purchaser shall have received from Sellers, a certificate of Sellers, dated as of the Closing Date, confirming the satisfaction of the conditions set forth in Sections 8.01 and 8.02.

8.06. Closing Deliveries. Purchaser shall have received all of the instruments, documents and considerations described in Sections 10.01 and 10.02, duly executed by Sellers or their Affiliates (other than as described in Sections 10.01(c), 10.01(d), 10.02(d) and 10.02(e)), as the case may be.

8.07. Release of Liens. Sellers shall have delivered to Purchaser releases of all liens and encumbrances of record on the assets of LHC and the Company and related pay-off letters and UCC-3 termination statements.

8.08. Certain Contracts. (a) Each of the Supply Agreement, the Qualified Contractor Agreement, the Qualified Contractor Assignment, the Clarification Agreement, the DOT Assignment, the Amended and Restated Hold Harmless Agreement (if such agreement is entered into pursuant to Section 7.20) and the Revenue Allocation Letter shall be in full force and effect as of the Closing Date.

(b) All Contracts between LHC or the Company, on the one hand, and any of the Sellers or any Affiliates of any of them, on the other hand, except for the Contracts listed on Schedule 8.08 shall have been terminated pursuant to agreements in form and substance satisfactory to Purchaser, which termination agreements shall contain releases substantially similar to the Release Agreement.

8.09. No Material Adverse Effect; Pending Temporary Clinical Study Matters. (a) Since December 31, 2002, there shall not have occurred any change or event, nor shall there exist any condition, which has prior to the Closing had a Material Adverse Effect which has not since been cured, or could as of the time of the Closing be reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) There shall not be in effect any pending (i) temporary stoppage of the Clinical Study imposed by the FDA or (ii) refusal by the FDA to accept the PMA Application for filing.

8.10. Exercise of Options. HDL shall have on behalf of each Optionholder exercised the Options, and the Option Shares shall have been issued, in accordance with Section 7.13 hereof.

## ARTICLE IX

### CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

All obligations of Sellers to effect the Closing hereunder shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions, any or all of which may be waived with respect to any Seller by such Seller in its sole discretion:



9.01. Performance by Purchaser. All the terms, covenants, agreements and conditions of this Agreement to be complied with and performed by Purchaser on or before the Closing shall have been complied with and performed in all material respects prior to or on the Closing Date.

9.02. Representations and Warranties. The representations and warranties made by Purchaser in this Agreement qualified as to materiality shall be true and correct and those not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date, except for those representations and warranties which address matters only as of a particular date (which shall be true and correct if qualified as to materiality and shall be true and correct in all material respects if not so qualified, in each case as of such date).

9.03. No Injunctions. There shall not be (i) in effect any statute, rule, regulation, executive order, decree, restraining order, preliminary or permanent injunction or other order enacted, promulgated, enforced or issued by any Governmental Entity which prohibits the consummation of the sale and purchase of the Shares pursuant to this Agreement or any of the other transactions contemplated by this Agreement or any of the Transaction Documents or (ii) any pending, or to the knowledge of Purchaser, threatened, suit, action or proceeding by any Governmental Entity (or by any other Person any suit, action or proceeding which has a reasonable likelihood of success) challenging or seeking to restrain or prohibit the consummation of the sale and purchase of the Shares pursuant to this Agreement or any of the other transactions contemplated by this Agreement or any of the Transaction Documents.

9.04. Governmental Approvals. All filings listed on Schedule 4.03 shall have been made and all consents or authorizations of Governmental Entities necessary for the consummation of the transactions contemplated hereby set forth in Part I of Schedule 4.03 shall have been obtained, and any applicable waiting period under the HSR Act, including any extensions of such waiting period, shall have expired or been terminated.

9.05. Officer's Certificate. Sellers shall have received from Purchaser, a certificate of Purchaser signed by its President or any Vice President, dated as of the Closing Date, confirming the satisfaction of the conditions set forth in Sections 9.01 and 9.02.

9.06. Closing Deliveries. Sellers shall have received all of the instruments, documents and considerations described in Section 10.03, duly executed by Purchaser.

## ARTICLE X

### CLOSING DELIVERIES

10.01. Closing Deliveries by the Company Stockholders. At the Closing and simultaneously with the other deliveries specified in this Article X, the Company Stockholders shall execute and/or deliver, or cause to be executed and/or delivered, to Purchaser, the following:

(a) Certificates evidencing all of the Company Shares, duly endorsed for transfer or accompanied by duly executed stock powers, in either case executed in blank, with appropriate transfer stamps affixed;

(b) The certificates required to be executed and delivered by the Company Stockholders pursuant to Section 8.05;

(c) Certificates from the Company pursuant to Treasury Regulations 1.897-2(h) (as described in Treasury Regulations 1.1445-2(c)(3)) stating that the Company is not, and within the five-year period ending on the Closing Date was not, a U.S. real property holding corporation as defined in Section 897 of the Code;

(d) A properly executed IRS Form W-9 or IRS Form W-8BEN from each Company Stockholder, if applicable, in form and substance reasonably acceptable to Purchaser, and such other documents as may be reasonably required by Purchaser, establishing that all payments of the Closing Date Purchase Price and any other amounts payable to such Company Stockholder pursuant to Section 2.02 may be made free of U.S. withholding tax; and

(e) Releases from each of [REDACTED] in substantially the form attached hereto as Exhibit C-1 and dated no later than eight (8) days and no more than fifteen (15) days prior to the Closing Date.

10.02. Closing Deliveries by HDL. At the Closing and simultaneously with the other deliveries specified in this Article X, HDL shall execute and deliver, or cause to be executed and delivered, to Purchaser, the following:

(a) Certificates evidencing all of the LHC Shares and all of the Company Shares held by LHC, duly endorsed for transfer or accompanied by duly executed stock powers, in either case executed in blank, with appropriate transfer stamps affixed;

(b) The certificate required to be executed and delivered pursuant to Section 8.05;

(c) The Escrow Agreement and the Transition Services Agreement, each duly executed by HDL and/or his Affiliates, as the case may be;

(d) Certificates from LHC pursuant to Treasury Regulations 1.897-2(h) (as described in Treasury Regulations 1.1445-2(c)(3)) stating that LHC is not, and within the five-year period ending on the Closing Date was not, a U.S. real property holding corporation as defined in Section 897 of the Code;

(e) A properly executed IRS Form W-9 or IRS Form W-8BEN, if applicable, in form and substance reasonably acceptable to Purchaser, and such other documents as may be reasonably required by Purchaser, establishing that all payments of the Closing Date Purchase Price and any other amounts payable to HDL pursuant to Section 2.02 may be made free of U.S. withholding tax; and

C-2.

(f) A Release from HDL in substantially the form attached hereto as Exhibit

10.03. Closing Deliveries by Purchaser. At the Closing and simultaneously with the other deliveries specified in this Article X, Purchaser shall execute and/or deliver, or cause to be executed and/or delivered:

(a) To Sellers, the following:

(i) The applicable portion of the Closing Date Purchase Price as provided for in, and payable in accordance with, Section 2.02(a)(vi);

(ii) The certificate required to be delivered pursuant to Section 9.05, duly executed; and

(iii) The Escrow Agreement and the Transition Services Agreement, each duly executed by Purchaser; and

(b) To the Escrow Agent, the Escrow Fund, as provided for in, and payable in accordance with, Section 2.02(a)(i); and

(c) To the Person entitled thereto, which shall be notified to Purchaser by Sellers pursuant to Section 2.02(c), the applicable portion of the Closing Date Purchase Price as provided for in, and payable in accordance with, Section 2.02(a)(ii), (iii), (iv) and (v) and Section 2.02(b).

## ARTICLE XI

### SURVIVAL AND INDEMNIFICATION

#### 11.01. Survival.

(a) The following representations and warranties of each party contained in this Agreement shall survive the Closing for the periods specified:

(i) the representations and warranties of Sellers contained in Article IV (the "Company Representations") shall survive until the eighteen-month anniversary of the Closing Date, except that: Section 4.09 (Intellectual Property Rights) and Section 4.15 (Environmental) shall survive until the third anniversary of the Closing Date; Section 4.13 (Benefit Plans; Excess Parachute Payments) and Section 4.22 (Brokers' Fees) shall survive until the fifth anniversary of the Closing Date; Section 4.02 (Capital Stock of the Company) shall survive indefinitely; and Section 4.14 (Taxes) shall not survive and shall terminate immediately upon Closing (other than Sections 4.14(f), 4.14(h), 4.14(i) and 4.14(k) which shall survive until thirty (30) days after the applicable statute of limitation expires (after giving effect to any extensions thereof));

(ii) the representations and warranties of Sellers contained in Article III (the "Seller-Specific Representations") shall survive until the eighteen-month

anniversary of the Closing Date, except that: Section 3.01 (Authorization) shall survive until the fifth anniversary of the Closing Date; and Section 3.04 (Title to Shares) shall survive indefinitely;

(iii) the representations and warranties of HDL contained in Article V ("LHC Representations") shall survive until the eighteen-month anniversary of the Closing Date, except that: Section 5.02 (Capital Stock of LHC) and Section 5.04 (Other Equity Interests) shall survive indefinitely; and Section 5.06 (Taxes) shall not survive and shall terminate immediately upon Closing (other than Sections 5.06(f), 5.06(h), 5.06(i) and 5.06(k) which shall survive until thirty (30) days after the applicable statute of limitation expires (after giving effect to any extensions thereof)); and

(iv) the representations and warranties of Purchaser contained in Article VI (the "Purchaser Representations") shall survive until the eighteen-month anniversary of the Closing Date, except that Section 6.02 (Authorization) and Section 6.09 (Brokers' Fees) shall survive until the fifth anniversary of the Closing Date.

(b) The agreements and covenants of the parties contained in Sections 2.02, 2.04, 2.05, 2.06, 7.02, 7.05, 7.06, 7.10, 7.14, 7.17, 7.18 and 7.19(b) and (c) and this Article XI, Article XII and Article XIII shall survive the Closing until the expiration of the term of the undertaking set forth in such agreement and covenant (or indefinitely if no such term is set forth). The agreements and covenants of Sellers contained in Sections 7.01(i), (iii), (iv), (xv) and (xvi), 7.17 and 7.19(a) shall survive the Closing until the eighteen-month anniversary of the Closing Date. Except as otherwise set forth in this Section 11.01, all other representations, warranties, agreements and covenants of the parties under this Agreement shall terminate and be of no further force or effect immediately after the Closing. No party shall have any liability or obligation of any nature with respect to any representation, warranty, agreement or covenant after the termination thereof, except as provided herein.

#### 11.02. Sellers' Indemnification.

(a) Subject to the other provisions of this Article XI:

(i) Sellers shall indemnify and hold harmless Purchaser and any of its Affiliates (including, from and after the Closing, LHC and the Company) and their respective members, partners, stockholders, officers, directors, employees, agents and representatives (collectively, the "Purchaser Indemnitees") from, against and in respect of Losses incurred by any such Purchaser Indemnitee as a result of, arising from, relating to or otherwise in connection with (w) any breach of any representation or warranty made by Sellers contained in the Company Representations (other than Section 4.14, which shall be governed by Section 11.09), (x) any liability of the Company and any related liability of the Purchaser Indemnitees resulting from any claim for personal injury to an individual (including liability for lost wages, pain and suffering, emotional distress and all other forms of damages) or for injury to property, resulting from or relating to any product of the Company sold or distributed on or prior to the Closing Date or, to the extent that the liability results from or relates to the manufacture of such product, manufactured on or prior to the Closing Date, (y) any liability of LHC or the Company as

a result of any distribution agreement that is in effect on or prior to the Closing Date between HDL or any of his Affiliates (other than the Company) and any Person and (z) the actual Debt Obligation of the Company as of the Closing Date exceeding the Company Closing Date Debt Obligation Amount;

(ii) each Seller shall severally indemnify and hold harmless the Purchaser Indemnitees from, against and in respect of Losses incurred by any such Purchaser Indemnitee as a result of, arising from, relating to or otherwise in connection with (x) any breach of any representation or warranty made by such Seller contained in the Seller-Specific Representations and (y) any breach or failure to perform any covenant or agreement of such Seller contained in this Agreement (other than Section 7.10(a) which shall be governed by Section 11.09);

(iii) HDL shall indemnify and hold harmless the Purchaser Indemnitees from, against and in respect of Losses incurred by any such Purchaser Indemnitee as a result of, arising from, relating to or otherwise in connection with (v) the actual Debt Obligation of LHC as of the Closing Date exceeding the LHC Closing Date Debt Obligation Amount, (w) any breach of any representation or warranty made by (1) HDL contained in the LHC Representations (other than Section 5.06 which shall be governed by Section 11.09) or (2) any Affiliate of HDL (other than the Company) contained in the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, the DOT Assignment or the Clarification Agreement, (x) any breach or failure to perform any covenant or agreement of (1) HDL contained in this Agreement (other than Section 7.10(a) which shall be governed by Section 11.09) or (2) any Affiliate of HDL (other than the Company) contained in the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, or the Clarification Agreement, (y) any liability of LHC and any related liability of the Purchaser Indemnitees resulting from any claim for personal injury to an individual (including liability for lost wages, pain and suffering, emotional distress and all other forms of damages) or for injury to property, resulting from or relating to any product of LHC or its Affiliates (other than the Company) sold or distributed on or prior to the Closing Date or, to the extent that the liability results from or relates to the manufacture of such product, manufactured on or prior to the Closing Date, and (z) the Link Orthopaedics Disposition, other than for Taxes which are governed by Section 11.09(a)(iv), or any other matter relating to Link Orthopaedics or any of its businesses, condition, properties, assets, liabilities (contingent or otherwise) or employees.

(b) Sellers' obligations to indemnify and hold harmless the Purchaser Indemnitees pursuant to this Section 11.02 shall terminate and be of no further force and effect:

(i) at the expiration of the relevant survival period applicable, as set forth in Section 11.01 (or in the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, the DOT Assignment or the Clarification Agreement, as the case may be), in the case of Sellers' obligation to indemnify and hold harmless Purchaser

Indemnitees pursuant to clause (w) of Section 11.02(a)(i), Section 11.02(a)(ii) and clauses (w) and (x) of Section 11.02(a)(iii);

(ii) on the eighteen-month anniversary of the Closing Date in the case of Sellers' obligation to indemnify and hold harmless Purchaser Indemnitees pursuant to clause (z) of Section 11.02(a)(i) and clause (v) of Section 11.02(a)(iii);

(iii) on the fifth anniversary of the Closing Date in the case of Sellers' obligation to indemnify and hold harmless Purchaser Indemnitees pursuant to clauses (x) and (y) of Section 11.02(a)(i) and clause (y) of Section 11.02(a)(iii); or

(iv) on the tenth anniversary of the Closing Date in the case of HDL's obligation to indemnify and hold harmless Purchaser Indemnitees pursuant to clause (z) of Section 11.02(a)(iii);

provided, however, that Sellers' obligations to indemnify and hold harmless the Purchaser Indemnitees pursuant to this Section 11.02 shall not terminate with respect to any claim for indemnification as to which a Purchaser Indemnitee has notified Sellers prior to the date on which Sellers' respective indemnification obligation would, but for this proviso, otherwise terminate under this Section 11.02(b). It is understood and agreed that the indemnities set forth herein relating to Link Orthopaedics shall not be limited by anything contained in the Link Orthopaedics Letter Agreement.

### 11.03. Purchaser's Indemnification.

(a) Subject to the other provisions of this Article XI, Purchaser shall indemnify and hold harmless the applicable Seller Indemnitee from, against and in respect of Losses incurred by any such Seller Indemnitee as a result of, arising from, relating to or otherwise in connection with:

(i) any breach of any representation or warranty made by Purchaser contained in the Purchaser Representations;

(ii) any breach of or failure to perform any covenant or agreement of Purchaser contained in this Agreement (other than Section 7.10(b) which shall be governed by 11.09);

(iii) any breach of any representation or warranty, or any breach of or failure to perform any covenant or agreement, by Purchaser or any of its Affiliates (including, after the Closing Date, the Company) made or contained in the Supply Agreement, the Qualified Contractor Letter or the Transition Services Agreement, in each case solely to the extent that such breach or failure to perform occurs following the Closing Date; and

(iv) any product liability of LHC or the Company resulting from any claim for personal injury to an individual (including liability for lost wages, pain and suffering, emotional distress and all other forms of damages) or for injury to property resulting from or relating to any product manufactured after the Closing Date (other than

through the arrangement provided for in the Supply Agreement or Qualified Contractor Agreement) or sold or distributed after the Closing Date (except to the extent that the liability results from the manufacture of such product and such manufacture was effected on or prior to the Closing Date or through the arrangement provided for in the Supply Agreement or Qualified Contractor Agreement).

(b) Purchaser's obligations to indemnify and hold harmless the Seller Indemnitees pursuant to this Section 11.03 shall terminate and be of no further force and effect at the expiration of the relevant survival period applicable, as set forth in Section 11.01 (or in the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, or the Clarification Agreement, as the case may be) or, in the case of clause (iv) of Section 11.03(a), on the fifth anniversary of the Closing Date; provided, however, that Purchaser's obligations to indemnify and hold harmless the Seller Indemnitees pursuant to this Section 11.03 shall not terminate with respect to any claim for indemnification as to which a Seller Indemnitee has notified Purchaser prior to the date on which Purchaser's respective indemnification obligation would, but for this proviso, otherwise terminate under this Section 11.03(b).

11.04. Limitations on Sellers' Indemnification. (a) Sellers shall not have any obligation to indemnify any Purchaser Indemnitee pursuant to Section 11.02 unless and until the aggregate amount of all such individual Losses incurred or sustained by all Purchaser Indemnitees:

(i) with respect to which Purchaser Indemnitees are entitled to indemnification pursuant to Section 11.02 (other than those pursuant to clause (z) of Section 11.02(a)(i) or clause (v) of Section 11.02(a)(iii)), exceeds [REDACTED] (the "Deductible"), in which case Sellers shall only be liable for the amount by which all such Losses, in the aggregate, exceed such Deductible; and

(ii) with respect to which Purchaser Indemnitees are entitled to indemnification pursuant to clause (z) of Section 11.02(a)(i) or clause (v) of Section 11.02(a)(iii), exceeds [REDACTED], in which case Sellers shall be liable for the aggregate of such Losses.

(b) (i) The aggregate liability of Sellers to indemnify Purchaser Indemnitees for Losses pursuant to Section 11.02(a)(i) (other than liability in respect of breaches of representations and warranties made in Sections 4.02 and 4.22 or pursuant to Section 11.02(a)(i)(z)), Section 11.02(a)(ii) (other than liability in respect of any breach of the representations and warranties made in Sections 3.01 and 3.04) and Section 11.02(a)(iii) (other than liability in respect of any breach of the representations and warranties made in Sections 5.02 or 5.04 or pursuant to Section 11.02(a)(iii)(v) and (z)), the aggregate liability of Sellers to indemnify Purchaser Indemnitees for such Losses shall in no event exceed [REDACTED] (the "Available Amount"), and any Purchaser Indemnitee's right to seek indemnification from Sellers for such Losses shall be limited to, and only available to the extent of, the Available Amount;

(ii) The aggregate liability of each Seller to indemnify Purchaser Indemnitees (x) for Losses pursuant to Section 11.02 for any breach of the representations and warranties made by Sellers in Sections 3.01, 3.04, 4.02, 4.22, 5.02

and 5.04 and pursuant to Section 11.02(a)(i)(z) and (y) pursuant to Section 11.09 in respect of Taxes relating to the Company or any Company Tax Group shall together in no event exceed the amount of the Total Purchase Price allocated to such Seller pursuant to Sections 2.02 and 2.04 (less any amounts previously paid by or on behalf of such Seller to Purchaser (including amounts paid from the Escrow Fund and amounts withheld pursuant to the set-off provisions of Section 11.11 hereof) to satisfy such Seller's indemnification obligations pursuant to this Article XI); and

(iii) The aggregate liability of HDL to indemnify Purchaser Indemnitees for Losses (x) pursuant to Sections 11.02(a)(iii)(v) and 11.02(a)(iii)(z) and (y) pursuant to Section 11.09 in respect of Taxes relating to LHC, any LHC Entity or any LHC Tax Group shall together in no event exceed the amount of the Total Purchase Price allocated to HDL pursuant to Sections 2.02 and 2.04 (less any amounts previously paid by or on behalf of HDL to Purchaser (including amounts paid from the Escrow Fund and amounts withheld pursuant to the set-off provisions of Section 11.11 hereof) to satisfy his indemnifications obligations pursuant to this Article XI).

(c) The aggregate liability of each Seller to indemnify Purchaser Indemnitees for Losses pursuant to Section 11.02(a)(i) shall be further limited as follows:

(i) in the case of liability to indemnify Purchaser Indemnitees for Losses pursuant to Section 11.02(a)(i) other than liability in respect of breaches of representations and warranties made in Sections 4.02 and 4.22 or pursuant to Section 11.02(a)(i)(z), the aggregate liability of such Seller to indemnify Purchaser Indemnitees for such Losses shall be further limited to the least of (x) such Seller's Percentage Interest of such Losses, (y) such Seller's Percentage Interest of the total of (I) [REDACTED] less (II) any amounts received by Purchaser Indemnitees as distributions from the Escrow Fund with respect to such Losses and (z) the aggregate amount of the Total Purchase Price allocated to such Seller pursuant to Sections 2.02 and 2.04 (less any amounts Seller previously paid by or on behalf of such Seller to Purchaser Indemnitees (including amounts paid from the Escrow Fund and amounts withheld pursuant to the set-off provisions of Section 11.11 hereof) to satisfy such Seller's indemnifications obligations pursuant to this Article XI); and

(ii) in the case of liability to indemnify Purchaser Indemnitees for Losses pursuant to Section 11.02(a)(i) for any breach of the representations and warranties made by Sellers in Sections 4.02 and 4.22, the aggregate liability of such Seller to indemnify Purchaser Indemnitees for such Losses shall be further limited to such Seller's Percentage Interest of such Losses;

provided, however, that the limitations on such Seller's aggregate liability pursuant to this Section 11.04(c)(i)(x) and (y) and Section 11.04(c)(ii) shall only apply to the extent that the indemnification obligations of such Seller with respect to such claims have not been satisfied through distributions from the Escrow Fund.

11.05. Limitations on Purchaser Indemnification. Purchaser's obligations to indemnify the Seller Indemnitees pursuant to this Article XI are subject to the limitations set forth in this



Section 11.05. Purchaser shall not have any obligation to indemnify any Seller Indemnitee pursuant to Section 11.03 unless and until the aggregate amount of all such individual Losses incurred or sustained by all Seller Indemnitees with respect to which Seller Indemnitees are entitled to indemnification pursuant to Section 11.03 exceeds the Deductible, in which case Purchaser shall only be liable for the amount by which all such Losses, in the aggregate, exceeds such Deductible. The aggregate liability of Purchaser to indemnify Seller Indemnitees for Losses pursuant to Section 11.03 shall in no event exceed [REDACTED].

11.06. Indemnification Procedures. (a) Until the earlier of, and to the extent of, the exhaustion or termination of the Escrow Fund, all indemnification claims made by a Purchaser Indemnitee against any Seller pursuant to Section 11.02 of this Agreement (and not otherwise set off pursuant to Section 11.11) shall be governed by the terms and procedures contained in the Escrow Agreement to the extent applicable.

(b) If any Person entitled to indemnification pursuant to Section 11.02 or 11.03 (the "Indemnified Party") receives notice from a third party of the commencement of any action, claim or demand against such Indemnified Party which such Indemnified Party determines could give rise to a claim for Losses under Sections 11.02 or 11.03 (such action, a "Third Party Claim"), such Indemnified Party shall, if a claim with respect thereto is to be made against any party obligated to provide indemnification pursuant to Section 11.02 or 11.03 (the "Indemnifying Party"), reasonably promptly give such Indemnifying Party written notice of such Third Party Claim in reasonable detail. The failure to give such notice shall not relieve any Indemnifying Party from any obligation hereunder except to the extent that such failure actually prejudices such Indemnifying Party. If such Indemnifying Party first acknowledges in writing that any Losses that may be incurred by such Indemnified Party in connection with such Third Party Claim constitute Losses for which the Indemnifying Party is obligated to indemnify the Indemnified Party, then such Indemnifying Party, or its designee, shall have the right to defend such Third Party Claim, at such Indemnifying Party's expense and with counsel of its choice reasonably satisfactory to the Indemnified Party; provided that the Indemnifying Party, or its designee, conducts the defense of such Third Party Claim actively and diligently. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party agrees to reasonably cooperate in such defense at the expense of the Indemnifying Party; provided, however, that the Indemnified Party may retain separate co-counsel at its sole cost and expense and may participate in such defense. If the Indemnifying Party, or its designee, assumes the defense of the Third Party Claim, it shall not consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld; provided that such consent shall not be required if (i) the proposed settlement imposes only monetary payment obligations less than the indemnification obligations of the Indemnifying Party to the Indemnified Party pursuant to Section 11.02 and 11.03 and (ii) such settlement includes a full release of the Indemnified Party in respect of all indemnifiable Losses resulting therefrom, related thereto or arising therefrom. In the event the Indemnifying Party does not or ceases to conduct the defense of such Third Party Claim actively and diligently: (x) the Indemnified Party may defend against, and, with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld), consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim; provided that the Indemnifying Party may retain separate co-counsel at its sole cost and expense and may participate in the defense of such Third Party

Claim; (y) the Indemnifying Party will reimburse the Indemnified Party for the costs of defending against such Third Party Claim to the extent provided in Section 11.02 and 11.03; and (z) the Indemnifying Party will remain responsible for any Losses the Indemnified Party may suffer as a result of such Third Party Claim to the extent provided in Section 11.02 and 11.03. Notwithstanding anything in the preceding to the contrary, no Indemnifying Party shall be liable for any settlement of a Third Party Claim effected without such Indemnifying Party's prior written consent; provided that such consent shall not be unreasonably withheld by the Indemnifying Party. Notwithstanding anything in the preceding to the contrary, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim (and shall be liable for the fees and expenses of counsel incurred by the Indemnified Party in defending such Third Party Claim) if (1) the Third Party Claim seeks an order, injunction or other equitable relief or relief for other than money damages against the Indemnified Party, (2) if the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (3) if the ad damnum is greater than the amount of Losses for which the Indemnifying Party is liable under Section 11.02 or 11.03 or (4) upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend such claim.

11.07. Limitation on Remedies The representations and warranties contained in this Agreement are exclusive. Except as expressly set forth in Articles III, IV and V, Sellers make no representation or warranty, express or implied, at law or in equity, in respect of LHC or the Company, or any of their respective assets, liabilities or operations, including with respect to merchantability or fitness for any particular purpose, and any such other representations or warranties are hereby expressly disclaimed. Purchaser makes no representation or warranty, express or implied, at law or in equity, in respect of, from and after the Closing, LHC or the Company, or any of their respective assets, liabilities or operations or the conduct of their or Purchaser's or its Affiliates' business, and any such other representations or warranties are hereby expressly disclaimed.

(b) From and after the Closing, the sole and exclusive remedy of each Seller Indemnatee and Purchaser Indemnatee as against any Person, with respect to all Losses pursuant to Section 11.02 or 11.03, as the case may be, (other than claims of, or causes of action arising from, fraud), shall be pursuant to the indemnification provisions set forth in this Article XI. In furtherance of the foregoing, effective as of the Closing Date, (i) each Seller Indemnatee shall be deemed to waive, release, remise and forever discharge any and all rights, claims, causes of action, and other remedies (other than claims of, or causes of action arising from, fraud) it may now or hereafter have against Purchaser related to or arising, directly or indirectly, out of this Agreement (but not the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, or the Clarification Agreement), other than claims for payments due to Sellers pursuant to Section 2.04, claims for indemnification asserted as permitted by and in accordance with the provisions set forth in this Article XI, claims for injunctive relief to prevent breaches of this Agreement or to specifically enforce this Agreement and, to the extent permitted under Section 13.01, claims asserted after termination of this Agreement, (ii) each Purchaser Indemnatee shall be deemed to waive, release, remise and forever discharge any and all rights, claims, causes of action, and other remedies (other than claims of, or causes of action arising from, fraud) it may now or hereafter have against any and all Sellers related to or arising, directly or indirectly, out this

Agreement (but not the Supply Agreement, the Qualified Contractor Agreement, the Transition Services Agreement, the Amended and Restated Hold Harmless Agreement, if any, or the Clarification Agreement), other than claims for indemnification asserted as permitted by and in accordance with the provisions set forth in this Article XI, claims for injunctive relief to prevent breaches of this Agreement or to specifically enforce this Agreement and, to the extent permitted under Section 13.01, claims asserted after termination of this Agreement and (iii) the parties agree that the written waiver of any condition to Closing based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant, agreement or obligation, shall be deemed a waiver of the right to indemnification under this Article XI solely to the extent of such written waiver with respect to such representation or warranty, covenant, agreement or obligation.

11.08. Purchase Price Adjustment. Any indemnification payments made by Purchaser or Sellers pursuant to this Agreement shall be treated by Purchaser and Sellers as an adjustment to the Closing Date Purchase Price (including for income tax purposes), to the extent permitted by applicable law.

11.09. Tax Indemnification. (a) Subject to Section 11.09(f), the Tax Indemnifying Party shall indemnify Purchaser Indemnitees against and hold them harmless from (i) all liability for Taxes of LHC and any Subsidiary of LHC (including for avoidance of doubt, the Company) and any LHC or Company Tax Group for any Pre-Closing Tax Period calculated in accordance with the principles of Section 11.09(c) below, (except for liability for Tax resulting from any transaction that is out of the ordinary course of business and that occurs on the Closing Date but after the Closing), (ii) all liability (as a result of Treasury Regulation 1.1502-6(a) or otherwise) for Taxes of any Person resulting from an agreement entered into or affiliation or membership in a Tax group of such Person on or before the Closing Date with LHC or any of its Subsidiaries, (iii) a breach of a representation, warranty or covenant contained in Section 4.14(f), 4.14(h), 4.14(i), 4.14(k), 5.06(f), 5.06(h), 5.06(i), 5.06(k) or 7.10(a), (iv) all liability attributable to the provisions of any Tax allocation, indemnity or sharing agreement or arrangement between Sellers and any of their Affiliates (other than LHC or any of its Subsidiaries) or any third party, on the one hand, and LHC or any of its Subsidiaries, on the other hand, entered into or existing on or before the Closing; and (v) all liability for reasonable legal fees and expenses and reasonable out-of-pocket costs incurred in connection with any item in clause (i), (ii), (iii) or (iv) above (for purposes of this Article XI, such items shall be considered to be Losses); provided, however, that any indemnity payments shall be reduced by any Tax benefit realized and increased by any Tax cost incurred, by the indemnified party. Such tax benefits and costs will be calculated and paid using the same principles contained in the definition of "Loss" under this agreement.

(b) Purchaser shall, and shall cause LHC and its Subsidiaries to, indemnify Seller Indemnitees and hold them harmless from (i) all liability for Taxes of LHC and its Subsidiaries (other than Taxes described in Section 11.09(a)(ii) above), for any Post-Closing Tax Period (calculated in accordance with the principles of Section 11.09(c) below), (ii) a breach of the covenant contained in Section 7.10(b) and (iii) all liability for reasonable legal fees and expenses and reasonable out-of-pocket costs incurred in connection with any item in clause (i) or (ii) of this Section 11.09(b) (for purposes of this Article XI, such items shall be considered to be Losses).

(c) In the case of any taxable period that includes (but does not end on) the Closing Date (a "Straddle Period"):

(i) real, personal and intangible property Taxes ("Property Taxes") of LHC and its Subsidiaries for the Pre-Closing Tax Period shall be equal to the amount of such Property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and

(ii) the Taxes of LHC and its Subsidiaries (other than Property Taxes) for the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.

(d) With respect to any Tax for a Straddle Period subject to an indemnification obligation of the Tax Indemnifying Party under Section 11.09(a), the Tax Indemnifying Party's indemnity obligation shall initially be effected by their payment to Purchaser of the Taxes for the portion of the Straddle Period ending on or before the Closing Date no later than three (3) days before the Tax Returns with respect to the final liability for such Taxes is required to be filed (or, if later, is actually filed). The payments to be made pursuant to this paragraph by the Tax Indemnifying Party or Purchaser with respect to a Straddle Period shall be appropriately adjusted to reflect any final determination (which shall include the execution of Form 870-AD or successor form) with respect to Straddle Period Taxes.

(e) In order for an indemnified party to be entitled to any indemnification provided for with respect to the items under Section 11.09(a) or Section 11.09(b) (each, a "Tax Claim"), the indemnified party must send reasonably prompt notice to the indemnifying party in writing of the Tax Claim (a "Tax Claim Notice"); provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the indemnifying parties have been actually prejudiced as a result of such failure.

(f) (i) Provided that the indemnifying party has acknowledged that the Tax Claim relates to an item for which the indemnifying party is liable under Section 11.09(a) or Section 11.09(b) herein, as the case may be, and that such indemnifying party will pay the full amount of any resulting liability:

(A) With respect to any Tax Claim solely relating to a Pre-Closing Period (other than a Tax Claim relating to Taxes of LHC or any Subsidiary of LHC for a Straddle Period), the Seller Representative (on behalf of the Tax Indemnifying Party) may control all proceedings taken in connection with such Tax Claim (including selection of counsel reasonably satisfactory to Purchaser) and, without limiting the foregoing, may in its sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any taxing authority with respect thereto, and may, in its sole discretion, either pay the Tax claimed and sue for a refund where applicable law permits such refund suits or contest the Tax Claim in any permissible manner; provided that the Seller Representative (on behalf of the Tax Indemnifying Party) shall obtain the prior written consent of Purchaser (which consent shall not be

unreasonably withheld or delayed) before entering into any settlement of such claim if the resolution or settlement of such claim could have the effect of increasing the Tax liability of or reducing any Tax asset of, or otherwise adversely affect Purchaser, LHC or any Subsidiary of LHC in a Post-Closing Period; and provided, further, that Purchaser shall have the right to participate in any such proceedings at its own expense; and

(B) Purchaser shall control any Tax Claims relating to LHC or any Subsidiary of LHC for any Post-Closing Period (other than a Tax Claim relating to Taxes of LHC or any Subsidiary of LHC for a Straddle Period).

(ii) The Seller Representative (on behalf of the Tax Indemnifying Party) and Purchaser shall jointly control all proceedings taken in connection with any Tax Claim relating to Taxes of LHC or any Subsidiary of LHC for a Straddle Period and neither the Seller Representative (on behalf of the Tax Indemnifying Party) nor Purchaser shall settle a Tax Claim relating to Taxes of LHC or any Subsidiary of LHC for a Straddle Period without the other party's prior written consent, which consent shall not be unreasonably withheld.

(iii) Prior to the indemnifying party notifying the indemnified party of its intention to defend the Tax Claim, the indemnified party will defend against such Tax Claim as the indemnified party deems appropriate in good faith.

(g) Payment by an indemnifying party of any amount due under this Section 11.09 shall be made within ten (10) days following written notice by the indemnified party that payment of such amounts to the appropriate tax authority is due, provided that the indemnifying party shall not be required to make any payment earlier than two (2) days before it is due to the appropriate tax authority. In the case of a Tax that is contested in accordance with Section 11.09(f), payment of the Tax to the appropriate tax authority will not be considered to be due earlier than the date a final determination to such effect is made by the appropriate taxing authority or court. Final determination shall have the meaning as set forth in Section 1313(a) of the Code.

(h) (i) HDL and Purchaser hereby agree that within ten (10) Business Days after the Closing Date they shall engage [REDACTED] (the "Appraiser") to determine the fair market value of Link Orthopaedics as of December 31, 2002. HDL shall provide to the Appraiser all information requested by the Appraiser relevant to determining such value. Within twenty (20) Business Days after being engaged by the parties, the Appraiser shall deliver to HDL and Purchaser a written statement setting forth the fair market value of Link Orthopaedics as of December 31, 2002 as determined by the Appraiser (such statement, the "Appraisal Statement"). After receipt of the Appraisal Statement, HDL may at any time within five (5) Business Days following such receipt, elect to appeal the Appraisal Statement by delivering written notice of such appeal to Purchaser. If HDL does not timely elect to appeal the Appraisal Statement, the Appraisal Statement shall be deemed final and binding, and the fair market value set forth in such Appraisal Statement shall then be deemed the "Link Orthopaedics Value" and the date on which such Appraisal Statement was delivered shall then be deemed the "Final Valuation Date"). In the event HDL does timely elect to appeal the Appraisal Statement during such five (5)

Business Day period, then HDL and Purchaser hereby agree that within ten (10) Business Days following such election they shall engage Standard & Poor's (or if Standard & Poor's is not available within the relevant time frame, Deloitte & Touche) (the "Final Appraiser") to determine the fair market value of Link Orthopaedics as of December 31, 2002. HDL shall provide to the Final Appraiser all information requested by the Final Appraiser relevant to determining such value. Within twenty (20) Business Days after being engaged by the parties, the Final Appraiser shall deliver to HDL and Purchaser a written statement setting forth the fair market value of Link Orthopaedics as of December 31, 2002 as determined by the Final Appraiser (the fair market value set forth in such statement of the Final Appraisal shall be deemed the "Link Orthopaedics Value" and the date on which such statement was delivered shall be deemed the "Final Valuation Date"). The fees and expenses of the Appraiser shall be borne by Purchaser, and the fees and expenses of the Final Appraiser, if any, shall be borne equally by Purchaser and HDL.

(ii) Within twenty (20) days after the Final Valuation Date, Purchaser shall deliver a written statement setting forth (x) the sum of the Tax liability of LHC for the taxable period ending as of December 31, 2002, calculated as if the fair market value of Link Orthopaedics is equal to the Link Orthopaedics Value and the amount of withholding Taxes, if any, that would be due on the difference between the Link Orthopaedics Value and \$1.00, plus the amount of any interest and penalties attributable to a late payment of such withholding Taxes, and (y) the Tax liability of LHC for the taxable period ending as of December 31, 2002, calculated as if the fair market value of Link Orthopaedics is \$1.00. HDL shall pay to Purchaser by wire transfer of immediately available funds an amount equal to the excess of (x) over (y) (such difference, the "Link Orthopaedics Tax Liability") within two Business Days of the receipt of the statement described in the foregoing sentence.

(iii) HDL hereby acknowledges and agrees that he shall continue to be liable, and shall indemnify Purchaser, for any Tax liabilities in excess of the Link Orthopaedics Tax Liability attributable to the sale of Link Orthopaedics to DERU GmbH.

(iv) The parties hereby agree to use the Link Orthopaedics Value for purposes of determining and reporting their liabilities for federal, state, local and foreign Tax Returns filed by them, unless there is a final determination by a taxing authority that the actual fair market value of Link Orthopaedics is different from the Link Orthopaedics Value. The U.S. income tax Returns of LHC for the year ending December 31, 2002 shall be filed after the Final Valuation Date by Purchaser.

(i) Purchaser agrees to pay (and cause LHC, the Company and Purchaser's Affiliates to pay) to the Tax Indemnifying Party all refunds of any Taxes with respect to any Pre-Closing Tax Period. At the expense of Sellers, the parties shall cooperate in order to take all reasonably necessary steps to claim any such refund. Any such refund shall be paid to such other party within ten (10) days after such refund is received.

(j) Notwithstanding anything to the contrary in this Agreement, the provisions of this Section 11.09 shall survive until 30 days after the expiration of the applicable

statute of limitations and the indemnification obligations contained in this Section 11.09 shall be limited to the extent provided by Section 11.04.

11.10. No Right of Contribution. No Seller Indemnitee shall have any right of contribution against LHC or the Company with respect to any breach by LHC or the Company of any representations, warranties, covenants or agreements.

11.11. Right of Set-Off. Purchaser and its Affiliates (which, from and after the Closing shall include LHC and the Company) may set off, against any amounts owed to any Seller under this Agreement, any amounts owed to Purchaser or its Affiliates pursuant to this Article XI or any of the other provisions of this Agreement, applying such amounts in satisfaction, to the extent of such amount, of such owed amounts. Purchaser and its Affiliates (which, from and after the Closing shall include LHC and the Company) may set off, against any amounts owed to HDL under this Agreement, any amounts owed by Link Castings to Purchaser or its Affiliates pursuant to the Supply Agreement, applying such amounts in satisfaction, to the extent of such amount, of such owed amounts.

## ARTICLE XII

### TERMINATION

12.01. Termination of Agreement. This Agreement may be terminated by the parties only as provided below:

(a) Purchaser and Sellers may terminate this Agreement by mutual written consent of Purchaser and the Seller Representative (on behalf of all Sellers) at any time prior to the Closing.

(b) Purchaser or the Seller Representative (on behalf of all Sellers) may terminate this Agreement by providing written notice to the other (i) at any time on or after the date that is three (3) months after the date of this Agreement (the "Expiration Date"), if the Closing of the transactions contemplated by this Agreement shall not have been consummated; provided, however, that if such Closing shall not have occurred due to the failure to satisfy the condition to Closing contained in Sections 8.03, 8.04, 8.09(b), 9.03 or 9.04, then such Expiration Date shall be automatically extended to the earlier of the date that is the fourth Business Day following the satisfaction of the last of such conditions or the date that is six (6) months after the date of this Agreement, (ii) or at any time (whether before or after the Expiration Date) if the conditions set forth in Article VIII (in the case of a termination by Purchaser) or Article IX (in the case of a termination by the Seller Representative) shall have become incapable of fulfillment and shall not have been waived by Purchaser or Sellers, as the case may be; provided, however, that any party that has failed to perform any covenant hereunder, which failure has resulted in the failure of a condition in Article VIII or IX, shall not be entitled to terminate this Agreement pursuant to this Section 12.01(b).

12.02. Effect of Termination. In the event of the termination of this Agreement pursuant to Section 12.01, all obligations of the parties hereunder (other than obligations under Sections 7.02 (only with respect to the confidential treatment of information), 13.01 and 13.13, which

shall survive termination) shall terminate without any liability of any party to any other party, and all expenses incurred by any party hereto shall be for its own account, except that nothing herein shall relieve any party from any liabilities with respect to breaches by any party on or prior to the date of termination of this Agreement.

## ARTICLE XIII

### MISCELLANEOUS

13.01. Expenses. Except as otherwise specifically provided in this Agreement, each party will pay its own expenses incident to this Agreement and the transactions contemplated hereby, including legal and accounting fees and disbursements. The provisions of this Section shall survive any termination of this Agreement.

13.02. Waiver of Compliance; Consents. Any failure of Purchaser on the one hand, or any Seller on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by such Seller or Purchaser, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing.

13.03. Preservation of Records. Purchaser shall not willingly destroy, any material records in the Company's possession at Closing relating to (i) safety and environmental matters (including environmental audits and assessments, waste disposal manifests, safety inspection reports, correspondence and notices from third parties and governmental agencies, etc.), for three years following the Closing Date (or, with respect to records that are relevant to any claims about which Purchaser has received written notification from the Seller Representative and which remain outstanding and unresolved under Article XI hereof, such longer periods as such claims remain outstanding and unresolved) or (ii) and product liability matters (including product history files, purchase orders, drawings and designs, patent infringement indemnification agreements, product instruction and labeling materials, etc.) for five years following the Closing Date (or, with respect to records that are relevant to any claims about which Purchaser has received written notification from the Seller Representative and which remain outstanding and unresolved under Article XI hereof, such longer periods as such claims remain outstanding and unresolved), and thereafter shall not willingly destroy such records, other than in accordance with its or Johnson & Johnson's document retention policy as then in effect. During such periods, as applicable, Sellers and their representatives and successors shall, on reasonable prior notice, have such access thereto during normal business hours, subject to an appropriate confidentiality undertaking, to examine, inspect and copy the same as is reasonably necessary in connection with Seller's obligations to indemnify under Article XI of this Agreement.

13.04. Amendments and Waivers. Subject to Section 13.02, the parties hereto may, by written agreement signed by the parties, modify any of the covenants or agreements or extend the time for the performance of any of the obligations contained in this Agreement or in any document delivered pursuant to this Agreement. Subject to Section 13.02, any party hereto may waive, by written instrument signed by such party, any inaccuracies in the representations and



[REDACTED]

with a copy to:

[REDACTED]

and with a copy to:

[REDACTED]

Any party hereto may change its address for receiving notices, requests and other documents by giving written notice of such change to the other parties hereto.

13.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13.08. Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall (to the extent permitted under applicable law) be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

13.09. Section Headings. The section headings and table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.10. Disclosure. The information set forth in the Schedules to this Agreement is qualified in its entirety by reference to the specific provisions of this Agreement and is not intended to constitute and shall not be construed as constituting, representations or warranties of the party to which such Schedules relate except as and to the extent provided in this Agreement. Inclusion of information in the Schedules shall not be construed as an admission that such information is material for purposes of the specific provisions of this Agreement to which such information relates. Any disclosure set forth in any particular Schedule to this Agreement will be deemed to be part of any other Schedule to this Agreement, to the extent that it is readily apparent from the face of such disclosure to an objective third party reviewing such disclosure without reference to extrinsic documentation that such disclosure is applicable to such other Schedule.

13.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

13.12. Entire Agreement. Except in the case of any confidentiality agreements, this Agreement and the Transaction Documents, together with the schedules and exhibits and the agreements, certificates and instruments delivered pursuant hereto and thereto, contain the entire agreement among the parties hereto and thereto, and supersede all prior agreements and undertakings (written and oral) between the parties hereto, relating to the subject matter hereof.

13.13. Publicity, Confidentiality.

(a) No party shall issue any press release or make any other public announcement with respect to this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party (which will not be unreasonably withheld or delayed), except as may be required by law or the regulations of any securities exchange and in such case (other than disclosure pursuant to securities laws or regulations of any securities exchange) such party must, prior to making such disclosure, (i) use commercially reasonable efforts to advise the other parties of such disclosure (including a copy thereof) as far in advance of such disclosure as is reasonably practical and (ii) consult with the other party with respect to the content of such disclosure.

(b) Without limiting Section 13.13(a), each Seller shall keep confidential all of the terms (including the consideration received by Sellers) of the transactions contemplated by this Agreement, except (i) as required by applicable law, regulation or legal or judicial proceeding (including any subpoena, civil investigative demand or other similar process), (ii) to such Seller's attorneys and accountants as reasonably necessary to be disclosed for purposes of preparing Tax returns for such Seller or its Affiliates or (iii) as part of any legal proceeding by such Seller to enforce its rights hereunder.

13.14. Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties and their respective successors and permitted assigns any rights or remedies under or by virtue of this Agreement, and no such Person shall assert any rights as a third-party beneficiary hereunder.

13.15. Dispute Resolution.

(a) Any dispute, claim or controversy arising from or related in any way to this Agreement or any of the Transaction Documents, or the interpretation, application, breach, termination or validity thereof, including any claim of inducement of this Agreement by fraud or otherwise, will be submitted for resolution to arbitration pursuant to the rules then pertaining of the CPR Institute for Dispute Resolution for Non-Administered Arbitration (available at [www.cpradr.org/arb-rules.htm](http://www.cpradr.org/arb-rules.htm)), or successor ("CPR"), except where those rules conflict with these provisions, in which case these provisions control. The arbitration will be held in New Brunswick, New Jersey.

(b) The panel shall consist of three arbitrators chosen from the CPR Panels of Distinguished Neutrals. In the event the aggregate damages sought by the claimant are stated to

be less than \$5 million, and the aggregate damages sought by the counterclaimant are stated to be less than \$5 million, and neither side seeks equitable relief, then a single arbitrator shall be chosen. Each arbitrator shall be neutral, independent, disinterested, impartial and shall abide by The CPR-Georgetown Commission Proposed Model Rule for the Lawyer as Neutral available at [www.cpradr.org/cpr-george.html](http://www.cpradr.org/cpr-george.html).

(c) The parties agree to cooperate (i) to attempt to select the arbitrator(s) by agreement within forty-five (45) days of initiation of the arbitration, including jointly interviewing the final candidates, (ii) to meet with the arbitrator(s) within forty-five (45) days of selection and (iii) to agree at that meeting or before upon procedures for the arbitration which will result in the hearing being concluded within no more than nine (9) months after selection of the arbitrator(s) and in the award being rendered within sixty (60) days of the conclusion of the hearings.

(d) In the event the parties cannot agree upon selection of the arbitrator(s), the CPR will select arbitrator(s) as follows: CPR shall provide the parties with a list of no less than fifteen (15) proposed arbitrators (ten (10) if a single arbitrator is to be selected) having the credentials referenced above. Within twenty-five (25) days of receiving such list, the parties shall rank at least 65% of the proposed arbitrators on the initial CPR list, after exercising cause challenges. The parties may then interview the five candidates (three if a single arbitrator is to be selected) with the highest combined rankings for no more than one hour each and, following the interviews, may exercise one peremptory challenge each. The panel will consist of the remaining three candidates (or one, if one arbitrator is to be selected) with the highest combined rankings. In the event these procedures fail to result in selection of the required number of arbitrators, CPR shall select the appropriate number of arbitrators from among the members of the various CPR Panels of Distinguished Neutrals, allowing each side challenges for cause and three peremptory challenges each.

(e) In the event the parties cannot agree upon procedures for the arbitration set forth in Section 13.15(c), then the arbitrator(s) shall set dates for the hearing, any post-hearing briefing, and the issuance of the award in accord with the Section 13.15(c) schedule.

(f) The arbitrator(s) must render their award by application of the substantive law of the State of New York and are not free to apply "amiable compositeur" or "natural justice and equity." The arbitrator(s) shall render a written opinion setting forth findings of fact and conclusions of law with the reasons therefor stated.

(g) In the event the panel's award exceeds [REDACTED] in monetary damages or includes or consists of equitable relief valued at [REDACTED] or more, then the losing party may obtain review of the arbitrators' award or decision by a single appellate arbitrator (the "Appeal Arbitrator") selected from the CPR Panels of Distinguished Neutrals by agreement or, failing agreement within seven (7) working days, pursuant to the selection procedures specified in Section 13.15(d). If CPR cannot provide such services, the parties will together select another provider of arbitration services that can. No Appeal Arbitrator shall be selected unless he or she can commit to rendering a decision within forty-five (45) days following oral argument as provided in this Section 13.15(g). Any such review must be initiated within thirty (30) days following the rendering of the award referenced in Section 13.15(f).

(h) The Appeal Arbitrator will make the same review of the arbitration panel's ruling and its bases that the U.S. Court of Appeals of the Circuit where the arbitration hearings are held would make of findings of fact and conclusions of law rendered by a district court after a bench trial and then modify, vacate or affirm the arbitration panel's award or decision accordingly, or remand to the panel for further proceedings. The Appeal Arbitrator will consider only the arbitration panel's findings of fact and conclusions of law, pertinent portions of the hearing transcript and evidentiary record as submitted by the parties, opening and reply briefs of the party pursuing the review, and the answering brief of the opposing party, plus a total of no more than four (4) hours of oral argument evenly divided between the parties. The party seeking review must submit its opening brief and any reply brief within seventy-five (75) and one hundred thirty (130) days, respectively, following the date of the award under review, whereas the opposing party must submit its responsive brief within one hundred ten (110) days of that date. Oral argument shall take place within five (5) months after the date of the award under review, and the Appeal Arbitrator shall render a decision within forty-five (45) days following oral argument. That decision will be final and not subject to further review, except pursuant to the Federal Arbitration Act.

(i) The parties consent to the jurisdiction of the Federal District Court for the district in which the arbitration is held for the enforcement of these provisions and the entry of judgment on any award rendered hereunder (including after review by the Appeal Arbitrator where such appeal is pursued). Should such court for any reason lack jurisdiction, any court with jurisdiction shall act in the same fashion.

**(j) EACH PARTY HERETO WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY.**

**(k) EACH PARTY HERETO WAIVES ANY CLAIM TO PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES FROM THE OTHER.**

**(l) EACH PARTY HERETO WAIVES ANY CLAIM OF CONSEQUENTIAL DAMAGES FROM THE OTHER.**

**(m) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR PURSUANT TO THE SUCCEEDING SENTENCE, EACH PARTY HERETO WAIVES ANY CLAIM FOR ATTORNEYS' FEES AND COSTS AND PREJUDGMENT INTEREST FROM THE OTHER. EACH PARTY ACKNOWLEDGES AND AGREES THAT SELLERS DO NOT WAIVE ANY CLAIM FOR ATTORNEYS' FEES AND COSTS AND PREJUDGMENT INTEREST FROM PURCHASER IN THE EVENT OF ANY CLAIMS BY ANY SELLER FOR PAYMENTS DUE PURSUANT TO SECTIONS 2.04.**

#### 13.16. Mediation.

(a) Any dispute, controversy or claim arising out of or related to this agreement, or the interpretation, application, breach, termination or validity thereof, including any claim of inducement by fraud or otherwise, which claim would, but for this provision, be submitted to arbitration shall, before submission to arbitration, first be mediated through

non-binding mediation in accordance with The CPR Mediation Procedure then in effect of CPR available at [www.cpradr.org/m\\_proced.htm](http://www.cpradr.org/m_proced.htm), except where that procedure conflicts with these provisions, in which case these provisions control. The mediation shall be conducted in New Brunswick, New Jersey and shall be attended by Seller and a senior executive from Purchaser with authority to resolve the dispute from each of the operating companies that are parties.

(b) The mediator shall be neutral, independent, disinterested and shall be selected from a professional mediation firm such as ADR Associates or JAMS/ENDISPUTE or CPR.

(c) The parties shall promptly confer in an effort to select a mediator by agreement. In the absence of such an agreement within 10 days of initiation of the mediation, the mediator shall be selected by CPR as follows: CPR shall provide the parties with a list of at least fifteen (15) names from the CPR Panels of Distinguished Neutrals. Each party shall exercise challenges for cause, two peremptory challenges, and rank the remaining candidates within 5 working days of receiving the CPR list. The parties may together interview the three top-ranked candidates for no more than one hour each and, after the interviews, may each exercise one peremptory challenge. The mediator shall be the remaining candidate with the highest aggregate ranking.

(d) The mediator shall confer with the parties to design procedures to conclude the mediation within no more than 45 days after initiation. Under no circumstances may the commencement of arbitration under Section 13.15 above be delayed more than 45 days by the mediation process specified herein absent contrary agreement of the parties.

(e) Each party agrees not to use the period or pendency of the mediation to disadvantage the other party procedurally or otherwise. No statements made by either party during the mediation may be used by the other or referred to during any subsequent proceedings.

(f) Each party has the right to pursue provisional relief from any court, such as attachment, preliminary injunction, replevin, etc., to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the arbitration, even though mediation has not been commenced or completed.

13.17. Seller Representative. The Seller Representative is hereby authorized and appointed to act for and on behalf of any or all Sellers as their attorney-in-fact (with full power of substitution) in connection with all matters referred to in this Agreement and the Escrow Agreement, including Article II, and Sellers acknowledge, understand and agree that Purchaser may rely upon the authority of the Seller Representative to act without any inquiry or liability. In furtherance of, and without limiting, the foregoing:

(i) Sellers approve and consent to the terms and conditions of the Escrow Agreement;

(ii) Sellers acknowledge, understand and agree that following Purchaser's payment in full to the Seller Representative on behalf of Sellers of any amounts payable to Sellers pursuant to Article II or otherwise under this Agreement or the Escrow Agreement, Purchaser shall have no liability to any Seller for any such

amounts, including for the Seller Representative's failure to distribute such amounts to Sellers in accordance with the terms hereof, and each Seller's sole remedy shall be against the Seller Representative and not against Purchaser; and

(iii) Sellers acknowledge, understand and agree that the Seller Representative shall act for Sellers on all of the matters set forth in this Agreement and the Escrow Agreement in the manner that the Seller Representative believes to be in the best interest of Sellers, but that the Seller Representative shall not be responsible to any Seller for any loss or damage any Seller may suffer by reason of the performance by the Seller Representative of such Seller Representative's duties under this Agreement or the Escrow Agreement, other than loss or damage arising from willful misconduct in the performance of such Seller Representative's duties under this Agreement or the Escrow Agreement, as the case may be.

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

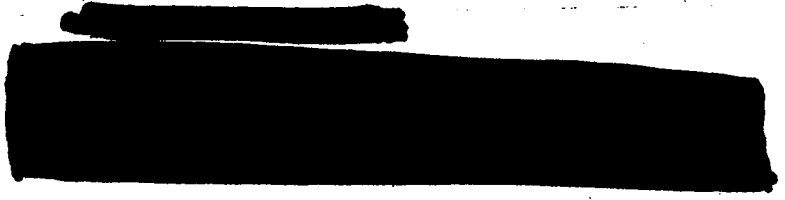
DEPUY ACROMED, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

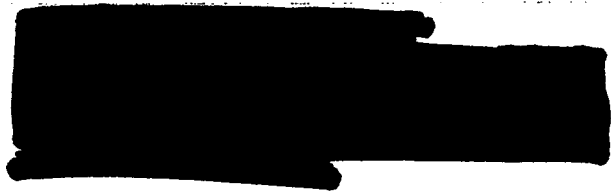


HELMUT D. LINK





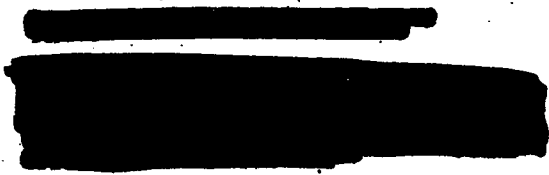




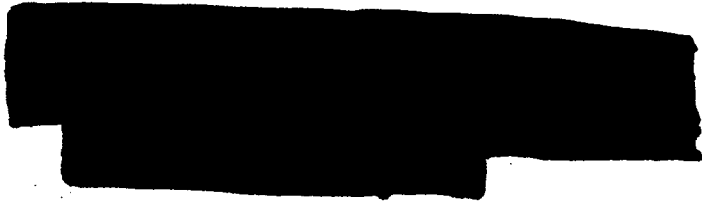


[REDACTED]

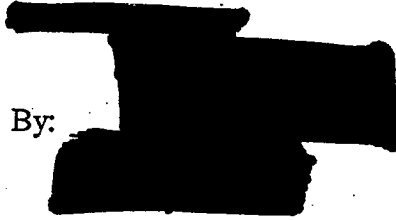








By: \_\_\_\_\_





SCHEDULE 4.09(a)(i)

Intellectual Property

**PATENTS OWNED BY THE COMPANY**

**Patent Family I  
Intervertebral disc endoprosthesis**

US	4,759,766	07/26/88	08/20/85
CA	1263201	11/28/89	09/03/85
DE	DD234609	04/09/86	02/12/85
DE	DD239523	10/01/86	07/19/85
DE	DD239524	10/01/86	07/19/85
DE	DD248018	07/29/87	09/04/84
DE	35 29 761	06/16/94	08/20/85
EP (AT, CH, FR, GB, LI, NL, SE)	0176728	07/26/89	08/17/85
JP	2027262	02/26/96	09/04/85
JP	1842784	05/12/94	09/04/85

**Patent Family IV  
Set of intervertebral disc endoprostheses**

EP (AT, BE, CH, DE, ES, FR, GB, GR, IT, LI, NL, SE)	0955021	09/19/01	03/13/98
HK	1023496	01/18/02	03/13/98

**Patent Family V  
Intervertebral endoprosthesis with a toothed connection plate**

US	6,416,551	07/09/02	05/19/00
AU	35405-00	N/A	05/19/00
BR	P10002436-8	N/A	05/19/00
CN	00120149	N/A	05/21/00
EP (AT, CH, DE, ES, FI, FR, GB, IT, LI, SE)	1057462	04/02/03	05/21/99

JP	2000-146374	N/A	05/18/00
KR	10-2000-27204	N/A	05/20/00
MX	004876	N/A	05/18/00

**Patent Family VI**  
**Intervertebral disc endoprotheses**

EP (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LI, LU, MC, NL, PT, SE, TR, AL, CT, LV, MK, RO, SI)	01 125 792	Published 7/17/02	10/29/01
WO (all countries designated)	PCT/EP01/15357	N/A	12/28/01
AR	020100097	N/A	01/11/02

**Patent Family VII**  
**Intervertebral disc endoprotheses**

EP (designated countries unknown)	01108607	N/A	04/05/01
AR	020101265	N/A	04/05/02
TW	91106909	N/A	04/04/02
WO (all countries designated)	PCT/EP02/03132	N/A	03/20/02

**Patent Family VIII**  
**Surgical Instrument Set**

EP (designated countries unknown)	01125793	N/A	10/29/01
DE	10225703	N/A	06/10/02
AR	020104089	N/A	10/28/02
WO (all countries designated)	PCT/EP02/12025	N/A	10/28/02

**Patent Family IX  
Intervertebral Disc Endoprosthesis**

DE	10247762	N/A	10/14/02
US	10/348,322	N/A	01/22/03
WO	PCT/EP03/00372	N/A	01/15/03
WO	PCT/EP03/02555	N/A	03/12/03

**Patent Family X  
Surgical instrument set**

US	4,997,432	03/05/91	03/14/89
US	5,122,130	06/16/92	03/14/89
DE (abandoned)	3809793	N/A	03/23/88
EP (DE, ES, FR, GB, IT, SE)	0333990	07/21/93	01/23/89

**Patent Family XIII  
Correction end plate for intervertebral prostheses (disclosure)**

US			02/05/03
----	--	--	----------

**Patent Family XIV  
Surgical Instrument for inserting intervertebral prosthesis (disclosure)**

US			02/05/03
----	--	--	----------

Pursuant to that certain Clarification Agreement, among other matters, the Company has certain co-ownership rights with Waldemar to the patent applications for the Radiographic Contrast Wire set forth below (together with all additional applications and patents claiming priority to the following):

**Plastic Implant with Channel for Radiographic Contrast Wire**

US	09/822,302	03/29/01
EP	00107331.1	04/04/00
AR	010101565	03/30/01
AU	33432/01	04/04/01
BR	PI0101300-9	04/03/01
CA	2,342,028	03/26/01
CN	01112482	04/04/01
IL	141722	02/28/01
JP	2001-105786	04/04/01
KR	10-2001-17578	04/03/01
MX	PA/a/2001/002854	03/19/01
RU	2001108846	04/03/01
TR	2001/00932	04/03/01
ZA (issued on 06/27/01)	2001/1733	03/01/01

**TRADEMARKS OWNED BY THE COMPANY**

Trademark application for "Charité" filed in the United States Patent and Trademark Office, serial no. 76/503,048.