

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT5910777

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT	
<b>CONVEYING PARTY DATA</b>		
	<b>Name</b>	<b>Execution Date</b>
	WILLIAM DUFFIELD	09/21/2012
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	INSTITUTE FOR MUSCULOSKELETAL SCIENCE AND EDUCATION, LTD.	
<b>Street Address:</b>	501 ALLENDALE RD	
<b>City:</b>	KING OF PRUSSIA	
<b>State/Country:</b>	PENNSYLVANIA	
<b>Postal Code:</b>	19406	
<b>PROPERTY NUMBERS Total: 1</b>		
	<b>Property Type</b>	<b>Number</b>
	Application Number:	15791232
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(301)365-9101	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
<b>Phone:</b>	301-365-9040	
<b>Email:</b>	mail@plumsea.com	
<b>Correspondent Name:</b>	PLUMSEA LAW GROUP, LLC	
<b>Address Line 1:</b>	6710A ROCKLEDGE DRIVE	
<b>Address Line 2:</b>	SUITE 400	
<b>Address Line 4:</b>	BETHESDA, MARYLAND 20817	
<b>ATTORNEY DOCKET NUMBER:</b>	138-1067	
<b>NAME OF SUBMITTER:</b>	JEREMY T. THISSELL	
<b>SIGNATURE:</b>	/ Jeremy T. Thissell / Reg. #56065	
<b>DATE SIGNED:</b>	01/14/2020	
<b>Total Attachments: 25</b>		
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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Appln. No. : 15/791,232 Confirmation No. 3537  
Applicant : Rami Hamzey et al.  
Filed : 10/23/2017  
Title : Implant With Multi-Layer Bone Interfacing Lattice  
TC/A.U. : 3774  
Examiner : Ann M. Schillinger  
Attorney Docket No.: 138-1067  
Customer No. : 36163

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**STATEMENT REGARDING SUBSTITUTE ASSIGNMENT FOR  
UNCOOPERATIVE INVENTOR**

Sir:

Inventor William Duffield has been, and continues to be, uncooperative with respect to signing formal documents pertaining to the above-referenced application. Accordingly, in lieu of an Assignment signed by inventor Duffield, Applicant submits, for recordation, a copy of Mr. Duffield's employment agreement, which states that his work with the Applicant of this application was under an obligation to assign, among other things, "all Intellectual Property resulting from Engineers activities under this Agreement." (See Exhibit No. 1, Section 8(b).)

In addition, Applicant notes that this Employment Agreement includes a typographical error, referring to the corporate entity as Institute for Musculoskeletal Science and Education, Inc., whereas the correct corporate

name is Institute for Musculoskeletal Science and Education, Ltd. In order to demonstrate the Assignee's proper corporate name, Applicant also submits herewith a copy of the corporation's Certificate of Organization from the Pennsylvania Department of State Corporation Bureau, indicating that the corporate name is, in fact, Institute for Musculoskeletal Science and Education, Ltd.

Applicant believes that these two documents unequivocally demonstrate Mr. Duffield's obligation to assign any and all intellectual property, including the above-referenced application, developed pursuant to his employment to Institute for Musculoskeletal Science and Education, Ltd.

Respectfully submitted,

PLUMSEA LAW GROUP, LLC

Date: January 14, 2020

By: / Jeremy T. Thissell /

Jeremy T. Thissell

Registration Number: 56,065

Telephone number: 301-365-9040

**AGREEMENT TO NOT TO DISCLOSE INFORMATION, RESTRAINT ON  
COMPETITION AND OTHER MATTERS**

This agreement ("Agreement") is entered into as of the 21 day of SEPT, 201 2 by, between and/or amongst Institute for Musculoskeletal Science and Education, Inc. on the one hand, and on the other hand, William Duffield, an individual residing in the State of Pennsylvania ("Individual") as well as an entity owned and controlled by Individual ("Entity"). As used herein, Individual and Entity shall be known collectively and individually as "Engineer".

**RECITALS**

WHEREAS, IMSE is a business with a location at Pennsylvania, the place where this Agreement was negotiated and finalized; and

WHEREAS, as used herein, the term "IMSE" shall refer to Institute for Musculoskeletal Science and Education, Inc. as well as any type of business entity ("Company").

WHEREAS, IMSE has developed contractual and business relationships with manufacturers and distributors of Medical Products ("Suppliers"); doctors, and other relevant parties to its business; and

WHEREAS, IMSE's business are enabled, enhanced and sustained as a result of, and through the exploitation and use of the goodwill IMSE has established, created and nurtured with IMSE CUSTOMERS and Suppliers, and which goodwill ("GOODWILL"), IMSE, subject to the restrictions in this Agreement, shall share with Engineer, and allow to be transferred to Engineer for the benefit of IMSE, which sharing and conditional transfer of the GOODWILL IMSE would otherwise not allow unless Engineer executed and agreed to be legally bound by this Agreement; and

WHEREAS,, the said GOODWILL, was and shall be created at IMSE's great effort, cost and investment, and with the use and deployment of it's proprietary and confidential material including, without limitation, information collected, created, discovered, developed and/or obtained by IMSE, it's employees, sales reps, agents, contractors and others working on it's behalf, including Engineer after the execution of this Agreement, that concerns or covers: (a) trade secrets, marketing plans and strategies, customer lists, clients, customers histories, vendor lists, principals, suppliers, repair centers, service providers, prospective customers, call lists, collected customer data, selling techniques, negotiations and past or future business deals, accounts receivable, financial reports, revenue reports and other financial information, proposals, contracts, agreements, plans, policies, pricing strategies and markups, employee and contractor lists, prospective customers and Suppliers as well as other proprietary and confidential information and data it has accumulated about IMSE CUSTOMERS and Suppliers; and (b) if not covered by the description set forth above, also including, but not limited to: preferences, habits, key personnel and contacts, buying histories, personal lives and other

information about, relating to and/or concerning IMSE CUSTOMERS and Suppliers; provided further that IMSE has kept confidential, and otherwise would not share with or disclose to Engineer all of what is set forth above in (a) and (b) (known individually and collectively as "Trade Secrets") unless Engineer executed and agreed to be legally bound by this Agreement; and

WHEREAS, this Agreement is a written expression of an agreement the parties reached at the same time that they agreed upon the other terms governing their relationship which has been memorialized in a separate document that is attached hereto as Exhibit No.1, and incorporated here by reference as though set forth at length; and the terms reflected in Exhibit No. 1 are, and shall be deemed part of the legal consideration for this Agreement along with the other legal consideration described herein.

#### WITNESSETH

Intending to be bound legally, and for and in exchange for the parties' mutual and separate promises, undertakings, acts, covenants, reliance on representations, forbearances and other good and valid legal consideration, the parties memorialize their agreement as follows:

1. Recitals: The Recitals set forth above are incorporated here by reference as though set forth at length.

2. Fiduciary Relationship:

(a). Engineer has entered into this Agreement and the has agreed to the terms in Exhibit No. 1 for Engineer's own, self-serving, financial benefit, and understands and acknowledges that Engineer's ability to earn sums is dependent on, and will be greatly enhanced by having IMSE's GOODWILL transferred to Engineer (which transfer is allowed only to the extent of achieving the purposes of this Agreement, and implanting the terms set forth in Exhibit No.1), as well as by IMSE disclosing to Engineer the Trade Secrets along with instruction, sales training, product training, experience transfer, expertise transfer and indoctrination about the peculiar, unique and special characteristics and relationship of the Products in connection with IMSE CUSTOMERS and Suppliers known to IMSE uniquely, all of which IMSE has and will have created, developed, assembled and communicated to Engineer at great cost, expense and effort.

(b) Engineer acknowledges and agrees that in the course of Engineer's relationship with IMSE and the implementation of this Agreement and the terms described in Exhibit No.1, Engineer is likely to encounter, cultivate, develop and foster existing, new and/or stronger relationships with IMSE CUSTOMERS and Suppliers, as well as Medical Providers and Suppliers including those are related to them who would be prospects to become new IMSE CUSTOMERS and Suppliers (known collectively and individually as "NEW IMSE CUSTOMERS and Suppliers"), and that Engineer's knowledge of, and Engineer's relationships and transactions with the IMSE CUSTOMERS and Suppliers, as well as the NEW IMSE CUSTOMERS and Suppliers

shall be solely for the benefit of IMSE, and shall be the result of, *inter alia*: (i) the investment, efforts, cost and expense of IMSE in training of Engineer, and in developing its GOODWILL and Trade Secrets; (ii) IMSE's associations, track record, reputation, and the special relationships IMSE developed and established with Medical Providers in general, and in the industry of the Medical Providers; and (iii) the time and effort IMSE spent in coaching and educating Engineer about IMSE's business, operations, proprietary methods and IMSE CUSTOMERS and Suppliers, as well as the disclosure to Engineer by IMSE of the Trade Secrets and the sharing and transfer of GOODWILL by IMSE.

(c) Engineer covenants, warrants, promises and represents that except as expressly allowed by IMSE in writing or for the limited purposes of implementing the terms in Exhibit No. 1, at no time, during the term of this Agreement, or after it's termination, regardless of the reason for the termination, shall Engineer use or make use of any asset or property of IMSE, including tangible, intellectual and intangible property, nor shall Engineer make any use or disclosure of the matter mentioned above in §2(b), including without limitation, the Trade Secrets, GOODWILL, and relationships with IMSE CUSTOMERS and Suppliers as well as NEW IMSE CUSTOMERS and Suppliers, all of which are, and shall be undeniably deemed the assets owned exclusively by IMSE.

(d) Engineer acknowledges, covenants, warrants, promises and represents that but for Engineer's agreement to the terms of this Agreement, Engineer would have no access to, or connection with the IMSE CUSTOMERS and Suppliers as well as NEW IMSE CUSTOMERS and Suppliers or any of the other matter referred to above in section §2(b); and further, Engineer has induced IMSE to share with Engineer and transfer the GOODWILL, as well as to train Engineer and disclose to Engineer the Trade Secrets as a direct result of Engineer's promises in this Agreement, including without limitation, the restrictions on disclosure by Engineer of Trade Secrets and the **RESTRICTIVE COVENANT AGAINST ENGINEER'S COMPETITION** set forth below.

(e) Both parties acknowledge and represent that Engineer intends for IMSE to rely on Engineer's promises and representations in this Agreement, which reliance is, and shall be deemed reasonable, and that but for IMSE's said reliance, IMSE would not have assisted and/or enabled Engineer to develop any relationships with IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers, nor would IMSE share with Engineer and transfer the GOODWILL, train Engineer, or disclose to Engineer the Trade Secrets.

(f) With regard to, and as a consequence of each and every representation made by Engineer in this Agreement, and in Engineer's dealing with IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers, at all times, Engineer shall owe IMSE the fiduciary duty of an agent, notwithstanding Engineer's status as described in any other aspect of this Agreement, or in the agreement described in Exhibit No.1, even if inconsistent with the agency and fiduciary duty established here; and in the event of such an inconsistency, this provision shall govern.

(g) Engineer's fiduciary duty to IMSE with regard to every representation made by Engineer in this Agreement, and in Engineer's dealing with IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers arises further as a result of IMSE's said reliance on the representations of Engineer, which reliance and this Agreement has and will have induced IMSE to treat Engineer in a confidential relationship, and to trust Engineer by allowing Engineer to enjoy the use of IMSE's Trade Secrets, GOODWILL, business relationships and other assets and property as allowed by this Agreement.

3. Nondisclosure of Confidential Information:

(a) Engineer acknowledges and agrees that the Trade Secrets and the information Engineer shall learn about IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers during the term of this Agreement are business assets of IMSE that are and have been kept protected, secret and confidential, and that they are special, unique, not generally known or IMSEly discovered or reproduced, and that they are valuable, and have been developed by IMSE at great investment, effort and cost and over a long period of time.

(b) Engineer acknowledges and agrees further that any disclosure or use of the Trade Secrets and the information Engineer shall learn about IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers during the term of this Agreement, except as allowed in this Agreement or otherwise authorized by IMSE in writing, and/or disclosure to or use by any person or entity other than IMSE will cause the IMSE to suffer irreparable injury.

(c) Except as required in the performance of Engineer's duties under the terms of Exhibit No.1 and/or as a sales representative of IMSE or otherwise allowed expressly and in writing by IMSE, Engineer shall not, and Engineer covenants warrants and represents that he will not, directly or indirectly, use or disclose the Trade Secrets to any person or entity, without regard to whether the Trade Secrets were extant before, or after the date of this Agreement.

(d) The restrictions against disclosure contained in this Agreement shall remain in full force and effect during the term of Engineer's relationship and thereafter.

(e) Upon termination of Engineer's relationship with IMSE for any reason, Engineer shall promptly deliver to IMSE all tangible objects, and shall immediately cause the deletion and destruction of all data bases, electronic files and/or electronically stored records containing, describing, referencing, mentioning, embodying and/or tending to lead to the discovery of Trade Secrets, including all copies thereof, whether prepared by Engineer or others, that Engineer shall have under Engineer's possession, control, or which Engineer could obtain if Engineer ever had such possession or control.

(f) In the event Engineer is required by any governmental agency or Order from any court and/or is otherwise legally compelled to disclose any of the Trade Secrets,



Engineer shall provide IMSE with prompt written notice and shall cooperate with IMSE in any and all efforts, including if directed by IMSE, turning over custody of all copies (including hard and electronic) to IMSE to divest Engineer of any custody or control over the Trade Secrets. Engineer shall have a fiduciary obligation owed to IMSE to preserve and protect the Trade Secrets from being used or disclosed. Under no circumstances shall Engineer voluntarily produce or disclose any Trade Secrets until or unless IMSE shall have given Engineer written permission; and Engineer shall follow the directions issued by IMSE.

(g) Engineer warrants, represents and agrees that all Trade Secrets, as well as any and all other documents, files, information and data generated during the course of Engineer's relationship with IMSE ("IMSE INFORMATION"), regardless of whether Engineer or IMSE produced or received the IMSE INFORMATION shall be deemed to be the sole and exclusive property of IMSE, and IMSE INFORMATION shall include, but not be limited to originals and copies of all correspondence, email, email attachments, faxes, written matter, printouts, memoranda, files, photographs, reports, legal opinions, accounting information and any and all other instruments, documents, or information of any nature whatsoever concerning transactions relating directly or indirectly to IMSE, Products, IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers, and at all times shall be and remain the exclusive property of IMSE, regardless of where located or in whose custody or control the IMSE INFORMATION may be.

(h) Engineer shall deliver all Trade Secrets as well as all IMSE INFORMATION and copies thereof to IMSE upon the "DELIVERY DATE" which is defined as the sooner of within two days of a demand for return made by IMSE, or within five days of the termination of Engineer's relationship with IMSE; provided further that all IMSE INFORMATION obtained, received or generated by Engineer after the DELIVERY DATE shall be delivered to IMSE within two days.

#### 4. Remedies for Breach:

(a) The parties recognize, agree and confirm from the facts known to them that this Agreement is necessary, and has been designed to prevent and remedy any unauthorized use or exploitation of IMSE's assets, including but not limited to the Trade Secrets, GOODWILL, IMSE INFORMATION, investments in training of Engineer, and the relationships and business IMSE has developed and shall develop in connection with IMSE, Products, IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers.

(b) The parties further recognize, agree and confirm from the facts known to them that any breach of this Agreement by Engineer would result in irreparable harm, unquantifiable damage to the business, reputation, and operation of IMSE, and irreparable injury that very likely would be catastrophic, threatening to the very viability of IMSE, and it's ability to compete, provide income to it's employees and sales force; and in addition, a breach would also be very likely to disrupt the operations of IMSE CUSTOMERS as well as interfere with their care of patients which would irreparably

injure IMSE's relationships with IMSE CUSTOMERS and permanently destroy the GOODWILL and excellent reputation IMSE enjoys; and any breach of this Agreement by Engineer would be likely to result further in unfair competition, interference with IMSE's contracts and contractual relationships, and cause other harm to IMSE such that monetary damages could not make IMSE whole.

(c) The parties further acknowledge that the restrictions contained in this Agreement are reasonable and necessary in view of the nature of IMSE's business and in order to protect its legitimate business interests.

(d) As a result of the matters set forth above in, and because of the irreparable injury IMSE would otherwise be highly likely to suffer in the form of injury to its business interests it has the right to protect, the parties stipulate and agree that if Engineer breaches, or threatens to breach any aspect of this Agreement, and/or if Engineer competes, or threatens to compete against IMSE, as described below, or makes or threatens to make any unauthorized use or exploitation of IMSE's assets, including but not limited to the Trade Secrets, GOODWILL, IMSE INFORMATION, investments in training of Engineer, and the relationships and business IMSE has developed and shall develop in connection with IMSE, Products, IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers, IMSE shall be entitled, in addition to any other relief, action or remedy shall be entitled to the following:

(i) IMSE may seek injunctive and obtain relief on an emergent basis in the form of a temporary restraining order, special injunction or other immediate injunction (known individually and collectively as "TRO"), and Engineer agrees that, to the fullest extent allowed by the law, IMSE may obtain a TRO unilaterally and on an *ex parte* basis upon allegations in a sworn or verified Complaint or Affidavit filed in any court of competent jurisdiction in Pennsylvania, with a venue in Montgomery County or Philadelphia County; and further that service of any pleading, motion, petition or other document filed in furtherance of the TRO may be affected prior to, or simultaneously with the filing by fax, email containing PDF attachments, or by any method provided by the rules of the court.

(ii) IMSE may also seek other injunctive, declaratory and Equitable relief, including but not limited to a preliminary injunction, a Declaratory Order and whatever relief the court finds just and appropriate.

(iii) IMSE may also obtain damages, and Engineer agrees to waive and not present any defense or argument that IMSE's request for damages disqualifies it for injunctive or other relief in that Engineer acknowledges that IMSE would be likely to suffer both irreparable harm as well as additional damages that could be quantified and proven thus IMSE would not have an adequate remedy at law.

(e) In any action instituted by IMSE, Engineer agrees that the maximum damages it would suffer would not exceed \$100 by reason of the filing, and the parties stipulate and agree that the bond that IMSE shall post shall be in the face amount of

\$200; and the parties further authorize IMSE, through its counsel to represent to the court that the parties have agreed in advance to set the bond at \$200.

(f) Engineer agrees further that in any action instituted under this section of the Agreement, it shall accept service and will cause an acceptance of service document to be filed with the court upon transmission of copies of the matter that shall have been filed by email with PDF attachment or by fax, and that notwithstanding any requirement set forth in any court rules, Engineer agrees that actual service by email with PDF attachments or fax shall be deemed service under the court rules.

(g) In any action seeking injunctive relief, declaratory judgment, other Equitable relief or damages filed pursuant to this §5, the prevailing party, as part of any verdict, judgment, decree or order shall be entitled to an award and judgment against the other party for attorneys fees based on the fees actually incurred (which is what the parties intend and expect), or alternatively, as set by the court, along with payment of all costs and justifiable litigation expenses.

(h) Notwithstanding any dispute involving the provisions of this Agreement, Engineer shall comply with all of its terms during the pendency of any action.

(i) Waiver of a breach of any provision of this Agreement shall not operate as, or be deemed or construed as a waiver of any subsequent breach.

(j) The periods set forth in §6(b) shall be extended by time consumed by any litigation under this §5 and/or during the period of any breach by Engineer of this Agreement.

(k) It is the mutual intentions of the parties to establish a reasonable non-competition covenant in §6 based on what they know now, and what their reasonable expectations are for the future. However the parties recognize that future events, changes in the law or the interpretation of the law by the court may differ with what is agreed to here. Therefore the parties authorize, and respectfully and specifically request jointly, that the court reform any aspect of this Agreement the court finds to be excessive, unwarranted, unreasonable or contrary to law; and further, because both parties agreed that the restrictions are reasonable, the parties agree further that IMSE shall not be penalized or prejudiced if it awaits a ruling from the court and does not voluntarily reform the Agreement based on legal arguments or allegations asserted in any litigation.

## **6. RESTRICTIVE COVENANT AGAINST ENGINEER'S COMPETITION:**

(a) As used herein the words "compete" and "competition" shall mean other than pursuant to an agreement between IMSE and Engineer: (i) The sale, promotion, offer for sale, or provision of any service and/or information that could be associated with the sale, or offer for sale of any Product; (ii) The sale, promotion, offer for sale, or provision of any service and/or information that could be associated with the sale, or offer for sale of any thing that could be, is capable of being or is used as a substitute or

replacement for the whole, or any aspect of a Product by, or for any patient or Medical Providers; (iii) Participating with any person or entity that sells, offers for sale, provides any service and/or information that could be associated with the sale or offer for sale of the Product, or any thing that could be, is capable of being or is used as a substitute or replacement for the whole, or any aspect of a Product by, or for any patient or Medical Providers; (iv) Performing one or more acts, directly or indirectly, as an employee, owner, partner, shareholder, friend, family member, consultant, advisor, agent, contractor, source of information, trainer, educator, lecturer, author, distributor, service provider, manufacturer or sales representative, for or without remuneration or the receipt of anything of value where the said act or acts involve, relate to or are designed to facilitate or help the sale of any Product, or any thing that could be, is capable of being or is used as a substitute or replacement for the whole, or any aspect of a Product by, or for any patient or Medical Providers; (v) The use, exploitation, or transfer of GOODWIL, Trade Secrets, and/or information learned about IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers where the said use, exploitation, or transfer involves, relates to or is designed to facilitate or help the sale of any Product, or any thing that could be, is capable of being or is used as a substitute or replacement for the whole, or any aspect of a Product by, or for any patient or Medical Providers; (vi) The solicitation, communication with, sale to or efforts to communicate with IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers with regard to Product, or any thing that could be, is capable of being or is used as a substitute or replacement for the whole, or any aspect of a Product by, or for any patient or Medical Providers; and (viii) the acceptance of employment by, consulting for, or having any type of business relationship with any Supplier of a Product offered for sale by Engineer.

(b) During the term of the agreement referenced in Exhibit No.1 and any renewal thereof, and during the term of any other express or implied contractual relationship between Engineer and IMSE where Engineer is, or was involved in the sale of Products, and for a period of eighteen (18) months following the later of (i) the termination of Exhibit No.1 and the final renewal thereof, or (ii) the termination of any other express or implied contractual relationship between Engineer and IMSE, Engineer shall not, and Engineer warrants, represents and agrees that it will not, directly or indirectly, within any geographic area or locations where Engineer has had any contact with IMSE CUSTOMERS and Suppliers, and/or NEW IMSE CUSTOMERS and Suppliers:

(i) Do any act, communicate any words or participate, collaborate, assist and/or cooperate with any person or entity where the act, communication, participation, collaboration, assistance and/ or cooperation would result in competition with IMSE, or where Engineer would directly or indirectly compete with IMSE; or

(ii) Compete with IMSE in connection with, or for the business of persons or entities Engineer met, established a relationship with, or learned about as a result of Engineer's relationship with IMSE, or pursuant to any agreement Engineer had with IMSE; or

(iii) Compete with IMSE in connection with, or for the business of persons or entities Engineer established a relationship with, met or learned about when the persons or entities were IMSE CUSTOMERS, Suppliers, NEW IMSE CUSTOMERS and/or Suppliers; or

(iii) Compete with IMSE in alliance, or participation with persons or entities who were employees, agents, representatives and/or contractors of IMSE; or

(iv) Compete with IMSE in alliance, or participation with persons or entities who were employees, agents, representatives and/or contractors of IMSE CUSTOMERS and Suppliers and/or NEW IMSE CUSTOMERS and Suppliers.

(c) In addition, Engineer shall not compete, as set forth above in 6 (a) and (b) and their subparts, individually or in conjunction with any other person, group, entity or organization of any nature and/or as an employee, agent, representative, partner, contractor, consultant to, friend of, relation of, advisor to, or holder of any interest in any other person, firm, corporation, trust, partnership, joint venture, club, group, limited liability partnership, limited liability company, association or entity of any nature, whether formally established or otherwise.

(d) Engineer shall not participate or cooperate with any person or entity in any activity or undertaking not mentioned above that would result in competition with IMSE, nor shall Engineer, intentionally, unwittingly, negligently or mistakenly engage in any act that would result in competition with IMSE.

(e) Engineer shall not solicit, recruit, entice, cause or induce any person or entity who or which is, or at any time during the existence of a contractual relationship between Engineer and IMSE was an employee, contractor, representative or agent of IMSE to become employed by any other person or entity that competes with, or is in competition with IMSE, or to terminate his or it's employment or contractual relationship with IMSE, or to cooperate or participate with and person or entity in competition with IMSE, or to compete with IMSE

(f) Nothing in the foregoing shall prohibit Engineer from engaging in any business that is not in competition with IMSE.

(g) Notwithstanding anything contained herein to the contrary, Engineer shall not be prohibited from investing in the securities of any corporation having securities listed on a national security exchange, provided that such investment does not exceed five percent of any class of securities of any corporation engaged in business in competition with IMSE, and provided that such ownership represents a passive investment.

7. Indemnification:

(a) Engineer warrants and represents that entering into a contractual

relationship with IMSE shall not violate the rights of any third party, nor shall Engineer be in breach of any agreement with a third party.

(b) Engineer shall indemnify and hold IMSE harmless from all demands, settlements, claims, causes of action, losses, administrative orders and notices, costs, fines, liabilities, penalties, judgments, damages (direct or indirect), expenses, fees (including attorneys' fees incurred by a attorney of IMSE's choice) (collectively, "Losses") resulting from, in connection with or arising out of the IMSE's solicitation, recruitment, interviewing and entering into an agreement with Engineer.

8. Survival: The provisions of this Agreement shall survive the termination of all contractual relationships between the parties, regardless of the reason for termination.

9. Miscellaneous:

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among the parties with respect to the subject matter of this Agreement. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

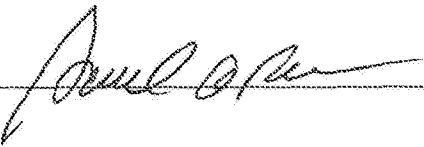
(b) No obligation under this Agreement may be delegated or transferred by a party without the express written approval of the other party. Any right or benefit owed to a party may be assigned by that party upon written notice to the other party.

(c) The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania. The parties agree that venue and jurisdiction for all actions to enforce or arising out of this Agreement shall be exclusively in the Court of Common Pleas of Montgomery County or Philadelphia County, or if there is federal jurisdiction, in the United States District Court for the Eastern District of Pennsylvania. The party bring the action may select the court.

(d) This Agreement is binding on the parties, their assigns, and successors in interests, heirs, estates and representatives.

(e) Each party was provided with ample time and opportunity to obtain advice of an attorney, and to negotiate the terms of this Agreement, and therefore any rule construing the words in an agreement against the drafting party shall not apply. The fact that IMSE shall have entered into the same or similar agreements with other persons or entities shall not be evidence of nor shall it raise the inference that the parties were not at arms length, and on the contrary, it shall be evidence that the terms of this Agreement have been deemed fair, reasonable and not in need of modification by those who have accepted it.

INTENDING TO BE LEGALLY BOUND, the parties have signed this Agreement as of the date first set forth above;



Date: 10-1-13

By: William D. Pincus

Date: 2012-09-21

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT NO.1 AS MENTIONED AND INCORPORATED INTO THE  
AGREEMENT TO NOT TO DISCLOSE INFORMATION, RESTRAINT ON  
COMPETITION AND OTHER MATTERS ENTERED INTO  
SIMULTANEOUSLY BY THE PARTIES

Agreement

This document (known as "Exhibit No.1") is, and memorializes the agreement entered into and made by the parties on the same date that the parties agreed to a contract known as the "Agreement To Not To Disclose Information, Restraint On Competition And Other Matters" ("Restraint Agreement"); and the date of the Restraint Agreement is, and shall be deemed to be the effective date of this Exhibit No.1 ("Effective "Date").

This Agreement is made by and between IMSE (hereinafter referred to as the "Company" whose address is William Duffield, (hereinafter referred to as "Engineer ") whose address is

109 MAGNOLIA CT COLLEGEVILLE PA 19424

RECITALS

WHEREAS, IMSE's business is enabled, enhanced and sustained as a result of, and through the exploitation and use of the goodwill. IMSE has established, created and nurtured with customers, faculty, medical companies, manufacturers, and doctors, which is goodwill ("GOODWILL"). IMSE, subject to the restrictions in the Restraint Agreement, shall share with Engineer, and allow to be transferred to Engineer for the benefit of Company, which sharing and conditional transfer of the GOODWILL Company would otherwise not allow unless Engineer executed and agreed to be legally bound by the Restraint Agreement; and

WHEREAS, IMSE wishes to provide opportunities for inventors, scientists, physicians and others to receive fair remuneration for allowing IMSE to attempt to commercialize, promote, and otherwise bring to market their creation or discovery of new inventions, research, scholarship, instruction, designs, concepts, innovations and all other activities, undertakings and contributions that further the Mission; and

WHEREAS, the Engineer, by reason of training, experience, talent and skills possesses the ability to perform services, produce intellectual property, and add value to IMSE in furtherance of the Mission; and

WHEREAS, all participation by the Engineer in matters covered by this Agreement, and all services provided by Engineer shall be in the role of an independent contractor; and the Engineer shall be performing professional services for which the shall have been trained, and which the Engineer performs professionally in the independent, established profession in which the Engineer is engaged; and



WHEREAS, Company and Engineer desire to establish and clarify the terms and conditions of Engineer 's duties and compensation for the position of "Development Engineer " responsible for all aspects of selling and if requested, demonstrating and providing information about the Products and/or (either as an employee or independent contractor as determined and described more fully below in the text);

WHEREAS, this Agreement is a written expression of an agreement the parties reached at the same time that they agreed upon the Restraint Agreement to which this document has been attached as Exhibit No.1; and the Restraint Agreement is incorporated here by reference as though set forth at length.

WITNESETH

Intending to be bound legally, and for and in exchange for the parties' mutual and separate promises, undertakings, acts, covenants, reliance on representations, forbearances and other good and valid legal consideration, the parties memorialize their agreement as follows:

1. Recitals: The Recitals set forth above are incorporated here by reference as though set forth at length.
2. Company Retains The Services Of Representative As Development Engineer

Company and Engineer agree that Engineer shall perform the services of, hold the position as a Development Engineer in accordance with the terms, and for the compensation set forth below. Engineer shall perform and discharge with skill, independent judgment, and acumen, and in accordance with the high standards of the Company, all responsibilities, undertakings and duties assigned or delegated by the Company, including but not limited to becoming trained, and prepared to, and actually selling, demonstrating and providing information about the Products and/or services as well as performing all administrative and record keeping obligations, tasks and duties required or requested by Company.

3. Fiduciary Duty Of Engineer:

Engineer has agreed to the terms set forth in this document (Exhibit No. 1) for Engineer's own, self-serving, financial benefit, and understands and acknowledges that Engineer's ability to earn sums is dependent on, and will be greatly enhanced by having Company's GOODWILL transferred to Engineer (as defined in the Restraint Agreement), as well as by Company disclosing to Engineer the Trade Secrets along with instruction, sales training, product training, experience transfer, expertise transfer and indoctrination about the peculiar, unique and special characteristics and relationship of the Products in connection with CUSTOMERS and Suppliers known to Company uniquely, all of which Company has and will have created, developed, assembled and communicated to Engineer at great cost, expense and effort.

4. At Will Relationship

It is expressly agreed, and has been requested by both Company and Engineer that the position of Development Engineer and the relationship between Company and Engineer shall be "at will" (as that term has been defined by the courts of Pennsylvania in cases involving employment matters); and it is therefore recognized, acknowledged and agreed, expressly that either the Company or Engineer may terminate this Agreement at any time, without cause and without the requirement that either provide the other with any advance notice; and in connection with a party's decision and action in terminating this agreement known as Exhibit No. 1, the terminating party shall neither need to, nor be obliged to have, or provide to the other party any reason, justification, explanation, basis or cause for the termination; and the relationship is and shall be at will.

5. Engineer May Not Bind Company To Legal Obligations

Engineer is not an authorized agent with the right, permission or ability to bind Company, and Engineer has no actual authority, nor shall Engineer do any act or make any statement that could create apparent authority to assume or create any obligations for or on behalf of Company, nor shall or may the Engineer make any utterance, representation, guarantee or warranty on Company's behalf, or that would or could bind Company legally, or that could reasonably be construed as binding on Company with respect to the Products, any legal obligation, or otherwise. Company shall have no to any person or entity for any debts incurred Engineer unless Company shall have agreed in writing to the contrary.

6. Engineer Shall Not Make Utterances About Products Not expressly Authorized

Company shall provide Engineer with the full and exclusive content that Engineer may repeat, utter, describe or state about the Products to Customers or Third Parties ("Script"), and Engineer shall not enlarge, exaggerate, enhance, modify or deviate from the Script.

7. Full Time Commitment Required From Engineer

The position of Development Engineer is a full time undertaking by Engineer, and Engineer agrees to devote all of the Engineer's productive time, attention and energy to the business of Company to the exclusion of any other activities for remuneration, job, position, business or endeavor.

8. WORK FOR HIRE

Engineer agrees to transfer and assign, and hereby transfers and assigns, to IMSE and its designees, without further compensation, the entire right, title and interest throughout the world in and to: (a) all technical information first produced by Engineer in the performance of this Agreement; (b) all Intellectual Property resulting from Engineers activities under this Agreement; (c) all Intellectual Property relating to any Deliverables

under this Agreement; and (d) creations and inventions that are otherwise made through the use of Company's or its affiliates' equipment, supplies, facilities, materials and/or Proprietary Information. All such Technical Information and Intellectual Property that are protectable by copyright, trademark and/or patent will be considered work(s) made by Engineer for hire for IMSE (as works "works made for hire" is defined in the United States Copyright Act, 17 U.S.C. section 101 and related and/or relevant Intellectual Property Statutes) and will belong exclusively to IMSE. If by operation of law or any other reason the Technical Information or Intellectual Property is not owned in its entirety by IMSE and/or does not fall within the statutory categories automatically upon creation, Engineer agrees to transfer and assign, and hereby transfers and assigns, same as stated in the first sentence of this section.

9. Compensation To Engineer

For and in consideration of Engineer's faithfully and satisfactorily performing all of Engineer's obligations and duties under this Agreement known as Exhibit No. 1 and also under the Restraint Agreement, IMSE shall pay the Engineer as follows:

- a. Seventy-five thousand (\$75,000) dollars per year paid on a monthly basis.
- b. Bonuses based on the following conditions:
  - i five thousand (\$5,000) dollars upon the filing of a 510k submission for the Stand-Alone ALIF system if filed on or before \_\_\_\_\_
  - ii seven thousand five hundred (\$7,500) dollars upon the FDA approval for the Stand-Alone ALIF system
  - iii Five Thousand (\$5,000) dollars upon the first sale of the Stand-Alone ALIF
  - iv Seventy five hundred dollars (\$7,500) dollars upon the \$ 500,000 dollar in sales achieved for all sales of the Stand-Alone ALIF Device
  - v five thousand (\$5,000) dollars upon the filing of a 510k submission for the Stand-Alone Cervical system if filed on or before \_\_\_\_\_
  - vi seven thousand five hundred (\$7,500) dollars upon the FDA approval for the Stand-Alone Cervical system
  - vii Five Thousand (\$5,000) dollars upon the first sale of the Stand-Alone Cervical Device
  - viii Seventy five hundred dollars (\$7,500) dollars upon the \$ 500,000 dollar in sales achieved for all sales of the Stand-Alone Cervical Device

11. Warranty Of Understanding By Engineer

Engineer warrants, covenants and agrees expressly and with full knowledge of the legal consequences that Engineer has read and fully understands this Exhibit No.1 and the Restraint Agreement, and further that all of Engineer's duties and obligations are

supported by adequate consideration, and further, because Engineer has had a career, as well as experience in jobs and positions unrelated to the position of Development Engineer Restraint as covered by this document, nothing in this document or in the Agreement Restraint Agreement, if enforced strictly against Engineer shall or would be likely to unduly restrict or curtail Engineer's ability to earn a livelihood following any termination of Engineer's employment with Company.

12. Miscellaneous:

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among the parties with respect to the subject matter of this Agreement. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

(b) No obligation under this Agreement may be delegated or transferred by a party without the express written approval of the other party. Any right or benefit owed to a party may be assigned by that party upon written notice to the other party.

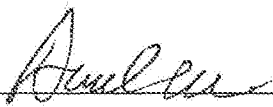
(c) The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania. The parties agree that venue and jurisdiction for all actions to enforce or arising out of this Agreement shall be exclusively in the Court of Common Pleas of Montgomery County or Philadelphia County, or if there is federal jurisdiction, in the United States District Court for the Eastern District of Pennsylvania. The party bring the action may select the court.

(d) This Agreement is binding on the parties, their assigns, successors in interests, heirs, estates and representatives.

(e) Each party was provided with ample time and opportunity to obtain advice of an attorney, and to negotiate the terms of this Agreement, and therefore any rule construing the words in an agreement against the drafting party shall not apply. The fact that IMSE shall have entered into the same or similar agreements with other persons or entities shall not be evidence of nor shall it raise the inference that the parties were not at arms length, and on the contrary, it shall be evidence that the terms of this Agreement have been deemed fair, reasonable and not in need of modification by those who have accepted it.

INTENDING TO BE LEGALLY BOUND, the parties have signed this Agreement as of the date first set forth above

IMSE Company:

By: 

Date: 10-1-13

Engineer:



Date: 2012-09-21

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

SCHEDULE "A" To Exhibit No. 1

PENNSYLVANIA DEPARTMENT OF STATE  
CORPORATION BUREAU

Certificate of Organization  
Domestic Limited Liability Company  
(15 Pa.C.S. § 8913)

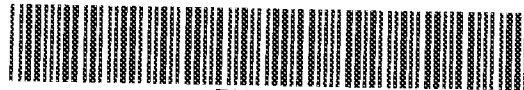
M. BURR KEIM COMPANY  
COUNTER PICK-UP

Document will be returned to the  
name and address you enter to  
the left.



Commonwealth of Pennsylvania  
CERTIFICATE OF ORGANIZATION 6 Page(s)

Fee: \$125



T1102760106

In compliance with the requirements of 15 Pa.C.S. § 8913 (relating to certificate of organization), the undersigned desiring to organize a limited liability company, hereby certifies that:

1. The name of the limited liability company (*designator is required, i.e., "company", "limited" or "limited liability company" or abbreviation*):

Institute for Musculoskeletal Science and Education, Ltd.

2. The (a) address of the limited liability company's initial registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

(a) Number and Street                      City                      State                      Zip                      County

1101 Market Street, Suite 2700, Philadelphia, PA 19107

(b) Name of Commercial Registered Office Provider                      County

c/o: \_\_\_\_\_

3. The name and address, including street and number, if any, of each organizer is (*all organizers must sign on page 2*):

Name                      Address

Gary Green, Esquire, 1101 Market Street, Suite 2700, Phila, PA

19107

2011 JAN 26 PM 4:40

PA. DEPT. OF STATE

PATENT  
REEL: 051592 FRAME: 0919

4. *Strike out if inapplicable term*

A member's interest in the company is to be evidenced by a certificate of membership interest.

5. *Strike out if inapplicable:*

Management of the company is vested in a manager or managers.

6. The specified effective date, if any is: 1/26/11  
month date year hour, if any

7. *Strike out if inapplicable:* The company is a restricted professional company organized to render the following restricted professional service(s):

8. For additional provisions of the certificate, if any, attach an 8 1/2 x 11 sheet.

IN TESTIMONY WHEREOF, the organizer(s) has (have)  
signed this Certificate of Organization this

26<sup>th</sup> day of January 2011

Gay  
Signature

Signature

Signature



8. The provisions of the Limited Liability Company Law of 1994, Title 15 Pa.C.S.A. § 8901 *et. seq* ("ACT"), to the extent permitted, are modified, supplemented and/or amplified as follows:

8(a) The Company shall conduct business under its own name as well as the Fictitious Name: "IMSE"

8(b) The Company is organized with four classes of membership, each of which is color-coded as White, Blue, Yellow or Red; and the quantity of a Member's ownership in a said color-coded class shall be designated as a percentage of the whole of the color-coded class (and as is appropriate in the context of any given transaction or writing, the Member's interest shall be called a share, and a Member shall be referred to as a "shareholder" or "owner" of the appropriate color-coded class, or as a "Member").

8(c) The percentage of ownership of the Company allocated to each of the color-coded classes is set forth in the Operating Agreement which was signed by the Founding Members before the admission of any other Members (which Operating Agreement is hereinafter known in this Certification as the "OA").

8(d) There are numerous decisions and determinations affecting the Members that have been delegated to a majority of the owners of the White Shares, as set forth in the OA.

8(e) The OA may be amended, modified, altered or terminated only by a written document signed by a majority of the owners of the White Shares.

8(f) The right to determine and manage all aspects of the Company not delegated to the Manager or to a majority of the owners of the White Shares shall belong to the Members along with the rights expressly provided to the Members by the Act or the OA.

8(g) As set forth in the OA, and as summarized here, if a Member wishes to sell his interest in the Company, he must first offer the interest to the Company which can accept or reject the offer. If the Company accepts the offer, and the parties cannot agree on price, the price shall be set at fair market value. If the Company rejects the offer, the purchaser shall have no right to participate in the management of the business and affairs of the Company; and the purchaser shall only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which the selling member would otherwise be entitled.

8(h) The Members shall not have the authority of general partners prescribed by the provisions of Chapters 81, 83 and 85 (relating to limited partnerships), and they shall not govern; instead, the authority of the Manager is no more or less than expressly allocated to the Manager in the OA; but the Members, shall be deemed to be limited partners for all purposes

8(i) The Manager, the designee of the Manager under a writing signed by the Manager or a Member owning White shares may execute and file with the department of State any and all documents on behalf of the Company.

8(j) Neither the owners of the White shares nor the Manager shall be responsible to the Members or the Company for claims seeking any form of monetary damages (except the Manager may be liable for sums not in excess of fees paid by the Company to the Manager) including, without limitation, compensatory damages, consequential damages, transactional damages and/or punitive damages except upon proof *beyond a reasonable doubt* of fraud, deceit or criminal behavior that caused actual monetary loss to the claimant. The Manager shall owe a fiduciary and contractual duty to the Company and shall commit no torts against the Company, but shall owe no fiduciary, contractual, tort or other duty to any Member or class of shareholders. Notwithstanding anything contained in this Agreement or elsewhere to the contrary, any act or omission of the owners of the White shares or the Manager, the effect of which may cause, or result in harm, loss or damage to the Company or any Members, if done in good faith to promote the best interests of the Company, shall not subject the owners of the White shares or the Manager to any liability to the Company, any Member or any class of shares.

8(k) The obligation of a Member to make a contribution may be compromised only with the consent of a majority of the owners of the White shares.

8(l) Upon the occurrence of an event of dissociation which does not result in the dissolution of the Company, a dissociating Member shall be entitled to receive no distribution subsequent to the date of his dissociation; and no sum shall be deemed earned but unpaid to the Member, and the Member waives all payment of distributions subsequent to the date of his dissociation. Provided, upon a said dissociation the fair value of the interest of the member in the Company shall be, and shall be deemed to be the actual cash the Member shall have paid plus interest for one year at the rate of six (6%) percent, with no value or sum being ascribed or allocated to non-cash contributions. Each Member specifically waives, relinquishes and voluntarily abandons all right to claim, and agrees to not claim that the fair value exceeds the actual cash the Member shall have paid plus interest for one year at the rate of six (6%) percent, and that the fair value does not include anything else.

8(m) At the time a Member becomes entitled to receive a distribution, the Member shall not have the status of and nor shall he be entitled to any remedies available to a creditor with respect to the distribution until the passage of 120 days where the distribution shall not have been paid; and each Member grants the Company a 120 grace period for the payment of distributions to him.

8(n) The Manager shall serve until a successor has been selected, as set forth in the OA.

8(o) Section 8942 of the Act (voting) is replaced entirely by the various provisions in the OA pertaining to voting and the management of the Company. Provided, as stated in the OA, a written document signed by a majority of the owners of the White shares is sufficient authority to amend the certificate or any provision of the OA.

8(p) The Company shall have an annual meeting at a time and place determined at least thirty days prior to the meeting. Manager shall send notice of the meeting to all Members. At such meetings, voting of Members shall be by color-coded classes of shares. Meetings may be attended by teleconferences, on or with the aid of the Internet, through other electronic or

technical means, or in person. Voting by proxy shall be permitted, and a Member may vote a proxy of an owner in a class of shares that the proxy holder does not own. Members may waive notice of any meeting. The Members entitled to vote may instead approve any action by consent without a meeting. The Manager shall record minutes of every meeting as well as every decision to act by consent without a meeting. If the minutes contain any confidential information, they shall be disclosed only on a "need-to-know" basis as determined by the majority of the owners of the White Shares.

8(q) The Company adopted specific, unique and/or alternative provisions in the OA, as allowed in §8944 (b) and (c) pertaining to classes of Members and class voting. In summary, the OA provides for (1) classes or groups of Members having diverse relative rights, powers and duties as well as the future creation of additional classes or groups of Members (and/or classes of shares) having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. The Agreement provides also for the taking of actions, including, without limitation, amendment of the Certificate and this Agreement or creation of a class or group of interests in the limited liability company that was not previously outstanding, without the vote or approval of certain member or class or group of members. This Agreement grants to the Members who obtain White Color-Coded Class of Shares ("White Shares") the right to vote separately upon many matter. The Members who own White Shares shall own in the aggregate, forty (40%) percent of the Company, subject to future dilution.

8(r) The OA and the Certificate may be amended, modified, altered or terminated by a written document signed by a majority of the owners of the White shares. Provided, a written document signed by a majority of the owners of the White shares is sufficient authority to amend the Certificate or any provision of this Operating Agreement.

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