

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT6645076

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
KEN AKSU	02/12/2013
RECEIVING PARTY DATA	
Name:	INSTITUTE FOR MUSCULOSKELETAL SCIENCE AND EDUCATION, LTD.
Street Address:	390 WATERLOO BOULEVARD
Internal Address:	SUITE 200
City:	EXTON
State/Country:	PENNSYLVANIA
Postal Code:	19341
PROPERTY NUMBERS Total: 6	
Property Type	Number
Application Number:	61893027
Application Number:	14518667
Application Number:	16514468
Application Number:	62151842
Application Number:	15136615
Patent Number:	10357368
CORRESPONDENCE DATA	
Fax Number:	(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>	
Phone:	301-365-9040
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Correspondent Name:	JEREMY T. THISSELL
Address Line 1:	PLUMSEA LAW GROUP, LLC
Address Line 2:	656 QUINCE ORCHARD ROAD, SUITE 660
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ATTORNEY DOCKET NUMBER:	137-1043
NAME OF SUBMITTER:	JEREMY T. THISSELL
SIGNATURE:	/Jeremy T. Thissell/ Reg. #56065
DATE SIGNED:	04/07/2021

PATENT

Total Attachments: 32

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Patent No. : 10,357,368
Appln. No. : 16/008,173 Confirmation No. 4966
Applicant : Kenan Aksu
Filed : June 14, 2018
Title : Sacroiliac Joint Implants and Implantation Methods
TC/A.U. : 3773
Examiner : Ellen Christina Hammond
Attorney Docket No.: 137-1043
Customer No. : 36163

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

STATEMENT REGARDING SUBMISSION OF ASSIGNMENT

Sir:

Inventor Dr. Kenan Aksu has, via a Faculty Agreement, irrevocably transferred and assigned, to Institute for Musculoskeletal Science and Education, Ltd. (IMSE), all right, title, and interest in and to any and all inventions developed pursuant to his tenure as a faculty member with IMSE.

IMSE submits, for recordation, a copy of the Faculty Agreement dated 2013 and signed by Dr. Aksu (attached as Exhibit A). The signature block of the 2013 Faculty Agreement lists "Ken Aksu." This is the same person as "Kenan Aksu," an inventor of the applications listed below. Dr. Aksu confirmed his association with IMSE with his agreement and execution of a second Faculty Agreement on April 19, 2017 (attached as Exhibit B).

The 2017 Faculty Agreement includes substantially the same provisions as the 2013 Faculty Agreement with respect to assignment of Intellectual Property rights. The provisions of the 2013 Faculty Agreement pertaining to assignment of rights are identified below. For reference, corresponding portions of the 2017 Faculty Agreement are also identified.

The 2013 Faculty Agreement states, among other things,

Intending to be legally bound, and for and in consideration of their mutual separate promises and undertakings and other things of value, the parties agree as follows.

(2013 Faculty Agreement, p. 2.)(See also page 2 of the 2017 Faculty Agreement, which includes the same language.)

The 2013 Faculty Agreement further states the following:

Faculty Member hereby irrevocably transfers and assigns to IMSE all of right, title and interest in, and to all materials and deliverables created, discovered, invented, developed or prepared in connection with any IMSE Case, or otherwise pursuant to this agreement, as well as all Intellectual Property and Research (known collectively as "Results"), including, without limitation, all copyrights, trade secrets, inventions (whether patentable or not), plans, products, designs, improvements, CME courses, and all other rights in and/or related, directly or indirectly to the Results (all of which shall be included in the definition of "Results"). IMSE shall own the Results, and Faculty Member disclaims any ownership interests.

(2013 Faculty Agreement, Section 7.1.)(See also Section 7.1 of the 2017 Faculty Agreement, which includes similar language.)

The 2013 Faculty Agreement defines Intellectual Property as including, among other things,

. . . all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part . . . , and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof.

(2013 Faculty Agreement, Section 2.2.)(See also Section 2.7 of the 2017 Faculty Agreement, which includes the same language.)

The 2013 agreement further states that

No duty may be delegated or transferred from a party and no party shall be relieved or discharged from [sic] any obligation hereunder except upon obtaining prior written consent from the other party.

(2013 Faculty Agreement, Section 8.)(See also Section 8 of 2017 Faculty Agreement, which includes the same language.)

In addition, the 2013 Faculty Agreement also states that

All Intellectual Property, unless expressly stated otherwise in a writing signed by IMSE, shall belong to, and be the exclusive property of IMSE.

(2013 Faculty Agreement, Section 2.2)(See also Section 2.7 of 2017 Faculty Agreement, which includes similar language.)

IMSE respectfully submits that any contributions of Dr. Aksu to the invention(s) disclosed in the following patents/applications were made while working pursuant to the attached Faculty Agreements. Dr. Aksu signed the first Faculty Agreement on February 12, 2013 and confirmed his association with IMSE with his signature of the second Faculty Agreement on April 19, 2017. Absent any other writings to the contrary, the attached signed 2013 Faculty Agreement effectively assigned, to IMSE, all rights to the applications listed below, all of which were filed after the 2013 Faculty Agreement was signed on February 12, 2013. Accordingly, Applicant respectfully submits the 2013 Faculty Agreement for recordation as an Assignment in the following applications:

U.S. Provisional Application No. 61/893,027, filed October 18, 2013;

U.S. Application No. 14/518,667, filed October 20, 2014, now abandoned;

U.S. Application No. 16/008,173, filed June 14, 2018, now U.S. Patent No. 10,357,368;

U.S. Application No. 16/514,468, filed July 17, 2019, pending;

U.S. Provisional Application No. 62/151,842, filed April 23, 2015; and

Appln. No. 16/008,173
Statement Regarding Submission of Assignment

U.S. Application No. 15/136,615, filed April 22, 2016, now abandoned.

Respectfully submitted,

PLUMSEA LAW GROUP, LLC

Date: April 7, 2021

By: / Jeremy T. Thissell /

Jeremy T. Thissell

Registration Number: 56,065

Telephone number: 301-365-9040

Attachments:

Exhibit A - 2013 Faculty Agreement

Exhibit B - 2017 Faculty Agreement

EXHIBIT A

(2013 Faculty Agreement)

FACULTY AGREEMENT

This agreement ("Agreement") is between the Institute for Musculoskeletal Science and Education, LLC, a Pennsylvania limited liability company ("IMSE") and Ken Aksu, D.O., whose business address is 390 Waterloo Boulevard, Suite 200, Exton, Pennsylvania, 19341 ("Faculty Member").

This Agreement is effective as of the 12 day of Feb., 2013 ("Effective Date").

RECITALS

WHEREAS, it is the goal, intention and mission ("Mission") of IMSE to undertake, study, create, invent, commercialize, popularize and provide education, scholarship and research about things that tend to improve and advance musculoskeletal science and medical treatments related thereto, including, *inter alia*, modalities of patient care, medical devices and medicines, diagnostic tools, and also to facilitate achievement by Orthopedic Surgeons and Neurosurgeons of better patient outcomes and meeting specific research objectives, at the cost of, and under the guidance and brand of IMSE; 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 Faculty Member, 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 Faculty Member in matters covered by this Agreement, and all services provided by The Faculty Member shall be in the role of an independent contractor; and the Faculty Member shall be performing professional services for which the shall have been trained, and which the Faculty Member performs professionally in the independent, established profession in which the Faculty Member is engaged; and

WHEREAS, IMSE shall offer to the Faculty Member opportunities and the option to participate in fee generating programs and activities ("Programs and Activities") as an independent contractor, involving, *by way of illustration*: participating in, or reviewing work on medical devices where IMSE was contracted by an inventor (including the Faculty Members), manufacturer or other interested party to provide additional development, corrections, improvements, innovations and enhancements; clinical research and product development plans concerning matters generated by the Faculty Members, device manufacturers, scientists and independent inventors; undertaking or contributing to customized research on projects contracted to IMSE; and collaborating with IMSE's

department for continuing medical education ("CME") in developing curriculum and concepts for, as well as delivering CME program for physicians offered by IMSE alone, or in conjunction with one of its CME licensing partners.

WHEREAS, there are previous contracts and/or agreements in place between IMSE and Faculty Member and the parties agree that they are all null and void, of no legal effect, and all obligations have been satisfied; and

WHEREAS, it is the intention of IMSE and Faculty Member to enter into this Agreement to define and describe their respective relationship; and

WHEREAS, the Programs and Activities contemplated by this Agreement are of mutual interest to the Faculty Member and IMSE, and the Faculty Member desires to collaborate with other the Faculty Members, as well as to individually provide to IMSE services, intellectual property, and other things of value in furtherance of the Mission under the terms and conditions of this Agreement.

WITNESSETH

Intending to be legally bound, and for and in consideration of their mutual separate promises and undertakings and other things of value, the parties agree as follows.

1. **Recitals:** The Recitals set forth above are incorporated herein as substantive terms of this Agreement as if set forth here at length.

2. **Definitions, Certain Conditions and Descriptions:** Words that are in parenthesis and quotation marks are defined terms according to the text near them; and the following additional definitions are used in this Agreement:

2.1 "IMSE Case" means any project, concept, task or idea that was introduced to the Faculty Member by IMSE as well as all projects, concepts, tasks or ideas where any resources, or the services of any employee or other the Faculty Member of IMSE were used or provided, directly or indirectly, during the term of this Agreement

2.2 "Intellectual Property" means all Research (as defined below) as well as patentable inventions conceived and reduced to practice in the conduct of, in connection with and/or related directly or indirectly to any IMSE Case, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Intellectual Property also includes all significant copyrightable software created in the conduct of the IMSE Case during the term of this Agreement as well as all concepts, ideas, models, diagrams, notes, discussions, plans, research, agreements, disclosures and matter recorded in writing or electronically growing out of, related to or produced in connection with any IMSE Case. *All Intellectual Property, unless expressly stated otherwise in a writing signed by IMSE, shall belong to, and be the exclusive property of IMSE.*

2.3 "Research" means all rights, concepts, intellectual property, products, inventions, data and information which are created, invented, discovered or otherwise generated in connection with any IMSE Case.

2.4 "General Remuneration" means the annual sum, in the amount of Two Thousand Dollars (\$2,000.00), paid to the Faculty Member by IMSE during the term of this Agreement for performance by the Faculty Member of the General Services described below in §4.

2.5 "Special Undertakings" means the sub-agreements between IMSE and the Faculty Members as described below in §5, that shall be entered into of the date hereof, or from time to time in the future, all of which shall be subject to and governed by the terms of this Agreement, and all of which shall be, and shall be deemed to be part of, or work on an IMSE Case.

2.6 "Collaborator Researcher Undertaking" means a Special Undertaking in which IMSE and the Faculty Member agree to collaborate on the investigation, experimentation, design, planning, conceptualizing, researching and all other activities involved in the creation, advancement, modification or development of a product, invention, concept or other matter where the general terms of this Agreement shall be modified to the extent that ownership of the rights to the results of the said collaboration shall be shared according to the terms of a written sub-agreement entitled, and known herein as "*Sub-Agreement for Collaborator Researcher Undertaking*"; and incorporated herein also are the related definitions as well as the terms and conditions described below at § 5.1 *et. seq.* In the event of a conflict between what is contained in any *Sub-Agreement for Collaborator Researcher Undertaking* and any part of this Agreement, in all instances, the terms and language of this Agreement shall govern and prevail.

2.7 "Collaborator Faculty Member" means the Faculty Member acting pursuant to a Collaborator Researcher Undertaking.

2.8 "Collaborator Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Collaborator Researcher Undertaking solely by the Collaborator Faculty Member or other inventors owing a duty to assign to Collaborator Faculty Member during the performance of this Agreement and the Collaborator Researcher Undertaking. It also includes all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Collaborator Intellectual Property also includes all significant copyrightable software created in the conduct of the Collaborator Researcher Undertaking during the term of this Agreement by employees of Collaborator Faculty Member.

2.9 "Confidential Information" means data, records, and all other forms of information that the Collaborator Faculty Member may need to perform the under this Agreement, including, without limitation, information IMSE considers to be, or that as a matter of law is, confidential as well as all matter developed with regard to any IMSE Case, Research, and Results (as defined below), all individually identifiable or protected health information (PHI) in any form, and information about other the Faculty Members, IMSE, projects and IMSE Cases, and information protected against disclosure by federal law. Confidential Information shall also include all information in any form developed or

created by or on behalf of IMSE relating to research, funding, the Faculty Members, and IMSE's affairs, financial matter and business operations, and/or that IMSE shall advise the Faculty Member is confidential, privileged, or proprietary. In addition, Confidential Information shall include the matter described below as trade secrets, confidential, proprietary and/or owned by IMSE. Provided however, Confidential Information shall not include: (a) information the Faculty Member legally possessed, without an obligation of confidentiality, prior to disclosure by IMSE; (b) information generally available to the public, or that becomes available to the public through a legally authorized source other than IMSE or any person affiliated with IMSE, and (c) information that was rightfully obtained by the Faculty Member from a third party who is under no obligation of confidentiality to IMSE with respect to such information.

2.10 "Patent" means all and each patent application, claim in each patent application and patent granted by the United States Patent and Trademark Office ("USPTO") concerning each, any part, or all of the matter that is the subject of this Agreement, directly or indirectly; and the word "application" refers to all applications, amendments, and other writings submitted to, or filed and/or recorded with the USPTO and other governmental offices concerning any matter covered by this Agreement.

3. **Term of This Agreement:** The term of this Agreement shall be for twelve months from the Effective Date. It shall be renewed each year for a successive renewal period of twelve months ("Renewal Term") unless either party provides the other with written notice objecting to such a renewal in the eleventh month of the original term or in any Renewal Term.

4. **Faculty Member's General Services:**

4.1 IMSE shall provide to the Faculty Member, from time to time, the option and opportunity to perform General Services by participating in Programs and Activities commensurate with the Faculty Member's training, profession, skills and/or capabilities; and each of the Programs and Activities shall be, and shall be deemed to be part of an IMSE Case. The Faculty Member's General Remuneration is based on the anticipation that the Faculty Member will participate in two or more of the Programs and Activities offered each year by IMSE subject to variations based on the nature of the applicable Programs and Activities and the circumstances that shall be extant.

4.2 The Faculty Member's General Services may include work, consultation, and/or other services related to CME, a class of inventions or products that is the subject of an IMSE Case, and may include as well, working in connection with any matter related to the Mission. The General Services may include, by way of example and not limitation, research, testing, drafting of papers or drawing, revising, editing and critiquing, creating, contributing to CME programs, participation in problem solving sessions, and otherwise participating in the achievement of the Mission.

4.3 Notwithstanding anything contained herein to the contrary, for convenience or other reasons, IMSE and the Faculty Member may, from time to time, set or modify assignments, subject matter, timetables and all matters related to General Services upon mutual agreement, which agreement may be oral or in writing, and shall not impair, or otherwise be deemed to alter or amend this Agreement, constitute any form of novation or be considered a material change to this Agreement.

5. Special Undertakings:

5.1 Collaborator Researcher Undertaking:

5.1.1 In addition to, and separate from General Services, IMSE may by a *Sub-Agreement for Collaborator Researcher Undertaking* signed by IMSE and the Faculty Member, contract with the Faculty Member to act as a "Collaborator Faculty Member" who shall participate in the Collaborator Researcher Undertaking as a collaborator, inventor, designer, researcher or in a similar capacity, on a specific project described in the *Sub-Agreement for Collaborator Researcher Undertaking*. A copy of the format of the *Sub-Agreement for Collaborator Researcher Undertaking* is attached hereto as "Schedule #1". The Collaborator Researcher Undertaking may include work, consultation, and/or other services related to a specific CME program, a specific invention or product owned or created by the Collaborator Faculty Member, another Faculty Member or a third party, and may include as well, providing services in connection with any specifically defined matter. The nature of the services shall be determined by the *Sub-Agreement for Collaborator Researcher Undertaking*, and may include, by way of example and not limitation, research, testing, drafting of papers or drawing, inventing, experimentation, revising, editing and critiquing, creating, delivering or contributing to CME programs, participation in problem solving sessions, and otherwise participating in the achievement of the Mission.

5.1.2 Collaborator Faculty Member shall commence the Collaborator Researcher Undertaking within the time, and according to the schedule set forth in the *Sub-Agreement for Collaborator Researcher Undertaking*, or if none is stated, within a reasonable time after the *Sub-Agreement for Collaborator Researcher Undertaking* shall have been executed. The Collaborator Faculty Member shall use good faith efforts to conduct such the Collaborator Researcher Undertaking substantially in accordance with the terms and conditions of the *Sub-Agreement for Collaborator Researcher Undertaking* and this Agreement. The Collaborator Faculty Member acknowledges that IMSE shall have the right and freedom to conduct and supervise the Collaborator Researcher Undertaking in a manner consistent with IMSE's Mission.

5.1.3 IMSE shall be entitled to designate any person, including, without limitation, another Faculty Member to serve as a supervisor of the Faculty Member or as a principal investigator.

5.1.4 Notwithstanding anything to the contrary contained herein, or in any Sub-Agreement For Collaborator Researcher, if the Collaborator Faculty Member ceases to perform services in connection with a Collaborator Researcher Undertaking before it shall have been completed, or if the Collaborator Faculty Member resigns as a Faculty Member, fails to perform properly as a Collaborator Faculty Member (in the sole determination of IMSE), becomes deceased, otherwise become unavailable, or fails to perform or complete the Collaborator Researcher Undertaking for any reason, IMSE, in its sole discretion, shall be entitled to take whatever remedial action it deems appropriate, including, *inter alia*, designate another person as a substitute for the Collaborator Faculty Member, terminating or otherwise affecting the Collaborator Researcher Undertaking, performing and/or completing the Collaborator Researcher Undertaking or any other action. In the event that the Collaborator Faculty Member does not perform or complete the Collaborator Researcher Undertaking, IMSE shall determine in its sole discretion the amount of compensation, if any, including terms and method of payment that shall be paid

to the Collaborator Faculty Member to compensate for the contribution of the Collaborator Faculty Member to the Collaborator Researcher Undertaking.

5.1.5 Notwithstanding anything to the contrary contained herein, or in any *Sub-Agreement for Collaborator Researcher*, IMSE shall have the sole and exclusive right to terminate, or modify any Collaborator Researcher Undertaking.

5.1.6 IMSE shall own and possess all right, title and interest in, and to the results and all byproducts of the Collaborator Researcher Undertaking as well as the Collaborator Intellectual Property including, *inter alia*, all Research, patents, copyrights, software, designs, products, improvements, enhancements, concepts, tangible and intangible materials, any matter recognized under the law as intellectual property. In addition, IMSE shall have the exclusive rights to commercialize, license, market, manufacture, brand, sell, convey, and make every other use of the Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking.

5.1.7 The Collaborator Faculty Member, in the absence of an event or condition described in §5.1.4 shall be paid for contributing to the Collaborator Researcher Undertaking, the amount, and in accordance with the terms and conditions set forth in the *Sub-Agreement For Collaborator Researcher*; and the said payments shall be the total, complete and full compensation owed for, and on account of the Collaborator Faculty Member's contributions to, and rights in the Collaborator Researcher Undertaking, including but not limited to the Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking.

5.1.8 IMSE shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking. IMSE and the Collaborator Faculty Member shall fully cooperate and assist in all patent prosecution. In addition, each party shall have a duty to provide the other with full and detailed disclosures of all potential Collaborator Intellectual Property growing out of, or related to the Collaborator Researcher Undertaking, including, but not limited to potential patentable matter, products, designs, plans and improvements, as well as any potentially copyrightable software created in the conduct of the Collaborator Researcher Undertaking.

5.1.9 All things, both tangible and intangible, regardless of the form or media used to record it that shall be, or shall have been developed, created, considered or used, directly or indirectly, in connection with the Collaborator Researcher Undertaking, unless disclosed previously in writing to the public, intentionally and deliberately by IMSE, or is in the public domain as a result of the actions of others, shall be deemed to be, and shall be the confidential, proprietary matter, and the trade secrets of IMSE, and shall be known herein as "*Collaborator Researcher Undertaking Trade Secrets*". In addition, *Collaborator Researcher Undertaking Trade Secrets* shall be deemed to be, and shall be Confidential Information, as defined above. For purposes of illustration, and not by way of limitation, *Collaborator Researcher Undertaking Trade Secrets* shall include, but not be limited to the results and all byproducts of the Collaborator Researcher Undertaking, including but not limited to: the Collaborator Intellectual Property; Research; work papers; material that would or could be included in patent applications and applications for copyrights; software, apps and programs developed or modified;

designs; drawings; developments; work papers, memoranda, journals and journal entries, notes and rough drafts; matters pertaining to models and prototypes of, as well as improvements and enhancements to, and working and finished products; electronic documents; emails; correspondence; and all records, regardless of the medium used to make the record; and ideas, concepts, tangible and other intangible materials as well as all matter recognized under the law as intellectual property.

5.1.10 Except as directed by IMSE, and/or as required by law, and/or as allowed expressly pursuant to permission granted in writing by IMSE, the Collaborator Faculty Member, as well as all servants, agents and employees of the Collaborator Faculty Member, and every entity in which the Collaborator Faculty Member has an interest shall not, during the term of this Agreement, nor for a period of five years after the termination of the this Agreement or the last Renewal Term (whichever is later), use or disclose any portion of the *Collaborator Researcher Undertaking Trade Secrets* and/or anything mentioned above in § 5.1.9; and the Collaborator Faculty Member recognizes that if there shall be any disclosure or use not permitted by this Agreement, IMSE shall suffer immediate, irreparable harm.

5.1.11 All participation by the Collaborator Faculty Member in the Collaborator Researcher Undertaking, and all services provided by the Collaborator Faculty Member in connection with the Collaborator Researcher Undertaking shall be in the role of an independent contractor. The parties expressly state, and acknowledge that the Collaborator Faculty Member is not an employee, servant, agent, joint venturer or partner of IMSE, and nothing contained in this Agreement may be properly interpreted to establish a any form of relationship that would create a relationship of principal and agent between IMSE and the Collaborator Faculty Member; provided further that this Agreement shall not be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

5.1.12 The Collaborator Faculty Member shall comply with all laws, regulations Institutional and/or Internal Review Boards, rules and/or regulations by virtue of the Collaborator Faculty members affiliation with any professional group and/or institution he/she is affiliated with and all other ethical and legal and other legal requirements applicable to the Collaborator Researcher Undertaking, including but not limited to any legal requirements applicable to the Collaborator Faculty Member's use of the results of the Collaborator Researcher Undertaking or any IMSE Property or *Collaborator Researcher Undertaking Trade Secrets* or Research and laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities..

5.2 IMSE as Purchaser or Developer of Faculty Member's Property:

5.2.1 In addition to, and separate from the General Services, IMSE and Faculty Member may enter into a *Sub-Agreement for the Purchase or Development of Faculty Member's Property*. It is contemplated that the said property of the Faculty Member ("Faculty Member's Property") would be in the form of research, technology, inventions or other intellectual property and that the *Sub-Agreement for the Purchase or Development of Faculty Member's Property* would be for IMSE to purchase or develop property owned all or in part by the Faculty Member.

5.2.1 The terms of any *Sub-Agreement for the Purchase or Development of Faculty Member's Property* shall be determined based on the nature of the Faculty Member's Property.

5.2.2 Unless expressly stated otherwise in the *Sub-Agreement for the Purchase or Development of Faculty Member's Property*, any services provided by the Faculty Member in connection with the development, improvement, patent, commercialization or other matter related to the Faculty Member's Property shall be treated as General Services if the parties had not entered into a *Sub-Agreement for Collaborator Researcher Undertaking* shall have been executed, or as a Collaborator Researcher Undertaking if a *Sub-Agreement for Collaborator Researcher Undertaking* shall have been executed.

5.2.3 Sums paid pursuant to the *Sub-Agreement for the Purchase or Development of Faculty Member's Property* as a royalty or otherwise shall be separate, and in addition to any other sums paid under this Agreement to Faculty Member.

6. Relationship of the Parties:

6.1 All participation by the Faculty Member in matters covered by this Agreement, and all services provided by Faculty Member shall be in the role of an independent contractor. The parties expressly state, and acknowledge that Faculty Member is not an employee, servant, agent, joint venturer or partner of IMSE, and nothing contained in this Agreement may be properly interpreted to establish a any form of relationship that would create a relationship of principal and agent between IMSE and Faculty Member; provided further that this Agreement shall not be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

6.2 Faculty Member acknowledges for itself and its employees or agents that Faculty Member is not an agent, servant or employee of IMSE for any purpose and, therefore, is not entitled to the benefits provided by IMSE to its employees, including, but not limited to, fringe benefits, worker's compensation, health and unemployment insurance, and pension plans or any other employee benefit. IMSE shall not pay federal or state withholding taxes in connection with the services provided by Faculty Member under this Agreement, and Faculty Member agrees to report and pay all applicable taxes. Faculty Member represents and warrants to IMSE that entering into this Agreement and performing the services specified herein, Faculty Member will not violate any obligations to, or contract with any employer or third person.

7. Ownership of Work Product and Confidentiality:

7.1 Faculty Member hereby irrevocably transfers and assigns to IMSE all of right, title and interest in, and to all materials and deliverables created, discovered, invented, developed or prepared in connection with any IMSE Case, or otherwise pursuant to this Agreement, as well as all Intellectual Property and Research (known collectively as "Results"), including, without limitation, all copyrights, trade secrets, inventions (whether patentable or not), plans, products, designs, improvements, CME courses, and all other rights in and/or related, directly or indirectly to the Results (all of which shall be included in the definition of "Results"). IMSE shall own the Results, and Faculty Member disclaims any ownership interests. Faculty Member represents and warrants to

IMSE that the services it shall have performed, and its work on, and transfer of rights to IMSE do not, and shall not violate or infringe a third party's patent, copyright, trade secret or other intellectual or proprietary right, and that no third party has an ownership interest in the Results.

7.2 Notwithstanding anything contained herein to the contrary, and as a further delineation of the ownership rights of IMSE, all things, both tangible and intangible, regardless of the form or media used to record it that shall be, or shall have been developed, created, considered or used, directly or indirectly, in connection with any IMSE Case and/or this Agreement, unless disclosed previously in writing to the public, intentionally and deliberately by IMSE, or is in the public domain as a result of the actions of others, shall be deemed to be, and shall be Confidential Information, as defined above, as well as the confidential, proprietary matter, and the trade secrets of IMSE, and shall be known herein as "*IMSE Trade Secrets*", all of which are, and shall be owned exclusively by IMSE to the exclusion of the Faculty Member.

7.3 For purposes of illustration, and not by way of limitation, *IMSE Trade Secrets* shall include, but not be limited to the Results and all byproducts of every IMSE Case and/or services or work performed under this Agreement, including but not limited to: the all Intellectual Property; Research; work papers; material that would or could be included in patent applications and applications for copyrights; software, apps and programs developed or modified; designs; drawings; developments; work papers, memoranda, journals and journal entries, notes and rough drafts; matters pertaining to models and prototypes of, as well as improvements and enhancements to, and working and finished products; electronic documents; emails; correspondence; and all records, regardless of the medium used to make the record; and ideas, concepts, tangible and other intangible materials as well as all matter recognized under the law as intellectual property and/or any other form of property.

7.4 Faculty Member agrees to accept and hold Confidential Information, *IMSE Trade Secrets*, the Research and the Results in confidence at all times during, and for five years after, the termination of this Agreement. Except as directed by IMSE and/or as required by law, and/or as allowed expressly pursuant to permission granted in writing by IMSE, the Faculty Member, as well as all servants, agents and employees of the Faculty Member, and every entity in which the Faculty Member has an interest shall not, during the term of this Agreement, nor for a period of five years after the termination of the this Agreement or the last Renewal Term (whichever is later), use or disclose any portion of the Confidential Information, *IMSE Trade Secrets*, the Research and/or the Results; and the Faculty Member recognizes that if there shall be any disclosure or use not permitted by this Agreement, IMSE shall suffer immediate, irreparable harm.

8. **Assignment:** The rights granted in, and the obligations owed to a party by virtue of this Agreement may not be transferred, conveyed, pledged or assigned by a party, whether by operation of law or otherwise, except with the written permission of the other party. No portion of this Agreement may be subcontracted by the Faculty Member without the prior written approval of IMSE. No duty may be delegated or transferred from a party, and no party shall be relieved or discharged from any obligation hereunder except upon obtaining prior written consent from the other party. Provided however, upon written notice to the Faculty Member, IMSE may transfer to any successor all, or a

part of its right title and interest in this Agreement, and may also transfer and delegate to any successor all of its liability, obligations and responsibility for performance and/or IMSE may cause itself to be completely substituted and legally replaced by any successor. Provided further that notwithstanding anything contained herein to the contrary, the Faculty Member may assign, or otherwise transfer to a third party (but not to a creditor of the Collaborator Faculty Member), the right of the Faculty Member to receive the payment of money due to the Faculty Member under this Agreement.

9. Trademarks of IMSE: The Faculty Member agrees not to use any name, logo, or trademark owned by IMSE, without the prior written authorization of IMSE.

10. Nondiscrimination: IMSE and Faculty Member shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, age, religion, national or ethnic origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era.

11. Governing Law: This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts (located within Philadelphia Pennsylvania if in state court or the Eastern District of Pennsylvania if in federal court) with respect to any and all disputes concerning the subject of this Agreement. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, that provision will be deemed amended or stricken (as appropriate) so as to render the remaining portions of the Agreement valid, legal and enforceable.

12. Integration: This Agreement including attachments referenced herein as having been incorporated into the Agreement by reference is the final and entire agreement between the parties with respect to the subject matter set forth herein, and supersedes, and expressly integrates all prior agreements, understandings, discussions, promises, representations, negotiations and statements, whether oral or written. Neither this Agreement nor any of its provisions may be modified or amended except by an instrument signed by both parties. If there is any ambiguity concerning this Agreement, the parties intend that the ordinary dictionary definition be used, and expressly disclaim reliance on any custom or usage in any industry or amongst the parties.

13. Force Majeure: Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, terrorism, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

14. **Notice:** Notices, statements, reports and other communications under this Agreement shall be in writing and shall be deemed to have been received as of the date dispatched if sent by USPS certified mail, return receipt requested or by public overnight courier (e.g., Federal Express) and addressed as set forth below; or if sent by email to an email address used by the recipient prior to the date of notice if an email receipt shall have been obtained:

If to IMSE:

Office of Faculty Affairs
Institute for Musculoskeletal Science and Education, LLC
150 North Radnor Chester Road
Suite F200
Radnor, PA 19087


If to Faculty Member:

Ken Aksu, D.O.
390 Waterloo Boulevard
Suite 200
Exton, Pennsylvania, 19341

15. FACULTY MEMBER shall indemnify, defend and hold harmless IMSE and its directors, officers, employees and agents from and against any and all costs, expenses, damages, judgments and liabilities including attorneys' fees incurred by or rendered against IMSE arising from any claim made or suit brought by a third party arising out of (a) acts or omissions of FACULTY MEMBER which constitute negligence or willful misconduct, (b) a breach by FACULTY MEMBER of its representations, warranties or obligations under this Agreement or otherwise, or (c) any personal injury or damage to property relating to or arising out of the faculty member's performance under this Agreement, whether based in strict liability in tort, negligent manufacture of product or any other allegation of liability relating to faculty member's work performed in accordance with this or any other agreement with IMSE.

INTENDING TO BE LEGALLY BOUND, the parties have signed and sealed this Agreement in Pennsylvania on the dates set forth below:

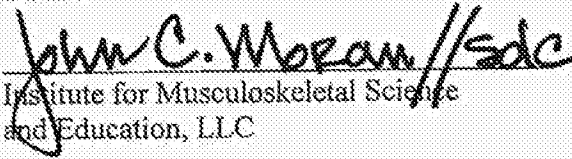
FACULTY MEMBER



Ken Aksu, D.O.


Date

IMSE

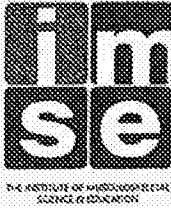


Institute for Musculoskeletal Science
and Education, LLC


Date

EXHIBIT B

(2017 Faculty Agreement)



FACULTY AGREEMENT

This Faculty Agreement (the "Agreement") is between the Institute for Musculoskeletal Science and Education, LLC, a Pennsylvania limited liability company ("IMSE"), and Kenan Aksu, D.O., an individual whose principal business address is 390 Waterloo Boulevard, Suite 200, Exton, PA 19341 (the "Faculty Member").

This Agreement is effective as of the ____ day of _____, 2017 ("Effective Date").

RECITALS

WHEREAS, it is the goal, intention and mission ("Mission") of IMSE to undertake, study, create, invent, commercialize, popularize and provide education, scholarship and research about things that tend to improve and advance musculoskeletal science and medical treatments related thereto, including, *inter alia*, modalities of patient care, medical devices and medicines, diagnostic tools, and also to facilitate achievement by Orthopedic Surgeons and Neurosurgeons of better patient outcomes and meet specific research objectives, at the cost of, and under the guidance and brand of, IMSE; 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 Faculty Member, 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 Faculty Member in matters covered by this Agreement, and all services provided by the Faculty Member, shall be in the role of an independent contractor; and the Faculty Member shall be performing professional services for which the Faculty Member shall have been trained, and which the Faculty Member performs professionally in the independent, established profession in which the Faculty Member is engaged; and

WHEREAS, IMSE may offer to the Faculty Member opportunities and the option to participate in fee generating programs and activities ("Programs and Activities") as an independent contractor, that may involve, *by way of illustration*: developing, participating in, engineering,

contributing ideas toward, providing input in any way in connection with, reviewing and/or working on medical devices where IMSE was contracted by an inventor, other parties who have contracted with IMSE to provide similar services (collectively "the Faculty Members"), a manufacturer or another interested party to provide additional development, input, opinions, corrections, improvements, innovations, enhancements, clinical research and product development plans related thereto; undertaking or contributing to customized research on projects contracted to IMSE; and collaborating with IMSE's department for continuing medical education ("CME") in developing curriculum and concepts for, as well as delivering CME programs for, physicians offered by IMSE alone or in conjunction with one of its CME licensing partners; and

WHEREAS, due to a growing number of faculty, it is the intention of IMSE to standardize its Faculty Agreements, have all of its Faculty Agreements expire and/or renew subject to conditions at the same time and make modifications to any existing Faculty Agreements to effect uniformity among the Faculty; and

WHEREAS, if there are previous contracts and/or agreements in place between IMSE and Faculty Member, the parties agree that they are all null and void, of no legal effect, and all obligations have been satisfied; and

WHEREAS, it is the intention of IMSE and Faculty Member to enter into this Agreement to define and describe their respective relationship; and

WHEREAS, the Programs and Activities contemplated by this Agreement are of mutual interest to the Faculty Member and IMSE, and the Faculty Member may choose to collaborate with IMSE or to individually provide to IMSE services, intellectual property, and other things of value in furtherance of the Mission under the terms and conditions of this Agreement.

WITNESSETH

Intending to be legally bound, and for and in consideration of their mutual separate promises and undertakings and other things of value, the parties agree as follows.

1. **Recitals:** The Recitals set forth above are incorporated herein as substantive terms of this Agreement as if set forth here at length.

2. **Definitions, Certain Conditions and Descriptions:** Words that are in parenthesis and quotation marks are defined terms according to the text near them; and the following additional definitions are used in this Agreement:

2.1 "Collaborator Faculty Member" means the Faculty Member acting pursuant to a Collaborator Researcher Undertaking.

2.2 "Collaborator Intellectual Property" means all patentable inventions conceived and reduced to practice in the conduct of the Collaborator Researcher Undertaking solely by the Collaborator Faculty Member or other inventors owing a duty to assign to Collaborator Faculty Member during the performance of this Agreement and the Collaborator Researcher Undertaking.

It also includes all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Collaborator Intellectual Property also includes all significant copyrightable software created in the conduct of the Collaborator Researcher Undertaking during the term of this Agreement by employees of Collaborator Faculty Member.

2.3 "Collaborator Researcher Undertaking" means a Special Undertaking in which IMSE and the Faculty Member agree to collaborate on the investigation, experimentation, design, planning, conceptualizing, researching and all other activities involved in the creation, advancement, modification or development of a product, invention, concept or other matter to the extent that ownership of the rights to the results of the said collaboration may or may not be shared according to the terms of a written sub-agreement entitled and known herein as "*Sub-Agreement for Collaborator Researcher Undertaking*." In the event of a conflict between what is contained in any *Sub-Agreement for Collaborator Researcher Undertaking* and any part of this Agreement, in all instances, the terms and language of this Agreement shall govern and prevail unless specifically otherwise agreed upon in writing by the parties hereto.

2.4 "Confidential Information" means data, records, and all other forms of information, tangible or intangible, regardless of the form or media used to record it, that shall be or shall have been developed, created, considered, discussed, conceptualized or used directly by Faculty Member pursuant to this Agreement or for a specific IMSE Case, as well as information that as a matter of law is deemed confidential in connection with this Agreement or such IMSE Case. Confidential Information shall also include all information in any form realized, developed or created by or on behalf of IMSE or Faculty Member relating to research, funding or the affairs, financial matters or business operations of either party or any information either party shall advise the other party is confidential, privileged or proprietary. Confidential Information further shall include matter developed in connection with any such IMSE Case, Research, and Results (as defined below) related thereto, all individually identifiable or protected health information (PHI) in any form, and information about Faculty Member, the Faculty Members, IMSE, projects and IMSE Cases, and information protected against disclosure by federal law. In addition, Confidential Information shall include the matter described below as trade secrets. Provided however, Confidential Information shall not include: (a) information a party legally possesses, without a duty or obligation of confidentiality prior to disclosure; (b) information generally available to the public or that is already in the public domain or that becomes available to the public through a legally authorized source other than IMSE or Faculty Member; and (c) information that was rightfully obtained by a party from a third party who is under no obligation of confidentiality with respect to such information.

2.5 "General Remuneration" means the annual sum, in the amount of One Thousand Dollars (\$1,000.00), paid to the Faculty Member by IMSE in anticipation of performance by the Faculty Member of the General Services described below in Section 4 as well as a minimum hourly rate of \$400 per hour for an IMSE Case, and compensation as set forth herein or in any other written agreements between the parties.

2.6 "IMSE Case" means any project, concept, task or idea that was introduced to the Faculty Member directly by or on behalf of IMSE in connection with Programs and Activities under the terms of the Agreement, including all projects, concepts, tasks or ideas where any

resources or the services of any employee of IMSE or the Faculty Members were used or provided, directly or indirectly, during the term of this Agreement in connection with such Programs and Activities. A Collaborator Researcher Undertaking as defined in Section 2. above shall qualify as an IMSE Case. However, a Faculty Property Undertaking, as defined in Section 5.2 below, shall not fall within the definition of an IMSE Case unless expressly agreed to in writing by the parties hereto in a separate written agreement.

2.7 "Intellectual Property" means all Research (as defined below) as well as patentable inventions conceived and reduced to practice in the conduct of, in connection with and/or related directly or indirectly to any specific IMSE Case being worked on by the Faculty Member in accordance with the Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof. Intellectual Property also includes all significant copyrightable software created in the conduct of such IMSE Case during the term of this Agreement, as well as all concepts, ideas, models, diagrams, notes, discussions, plans, research, agreements, disclosures and matter recorded in writing or electronically growing out of, related to or produced in connection with any such IMSE Case, and/or any and all work, work product, content, instructional design, and delivery including any recordings of the presentation of any CME Course in which the Faculty Member was involved. *All Intellectual Property related to such IMSE Case, unless expressly stated otherwise in a writing signed by IMSE, shall belong to, and be the exclusive property of IMSE.* Such Intellectual Property shall exclude intellectual property created pursuant to a Sub-Agreement for the Purchase and Development of Faculty Member's Property except as expressly agreed to in writing by the parties hereto.

2.8 "Patent" means all and each patent application, claim in each patent application and patent granted by the **United States Patent and Trademark Office** ("USPTO") concerning each, any part, or all of the matter that is the subject of this Agreement, directly or indirectly; and the word "application" refers to all applications, amendments, and other writings submitted to, or filed and/or recorded with the USPTO and other governmental offices concerning any matter covered by this Agreement.

2.9 "Research" means all rights, concepts, intellectual property, products, inventions, data and information which are created, invented, discovered or otherwise generated in connection with an IMSE Case specifically worked on by Faculty Member pursuant to the terms of this Agreement.

2.10 "Special Undertakings" means the sub-agreements between IMSE and the Faculty Member as described below in Section 5, that shall be entered into as of the date hereof, or from time to time in the future, all of which shall be subject to and governed by the terms of this Agreement.

3. Term of This Agreement: This Agreement will commence upon the Effective Date and will continue until the end of the calendar year of the Effective Date and automatically shall renew for additional one (1) year terms thereafter unless otherwise terminated by either party in accordance with the provisions of the Agreement (each, the "Term"). Either party shall have the right to terminate the Agreement at any time upon prior written notice to the other party thirty (30) days in advance of the intended termination date. Termination of the Agreement shall not

terminate the rights of Faculty Member with respect to any owed payments, or other rights of the Faculty Member as of the date of such termination. Termination of this Agreement will, in all cases and automatically, additionally terminate any *Sub-Agreement for Collaborator Research Undertaking* between the parties.

4. Faculty Member's General Services:

4.1 IMSE shall provide to the Faculty Member, from time to time in connection with an IMSE Case, the option and opportunity to perform general services (the "General Services") by participating in Programs and Activities commensurate with the Faculty Member's training, profession, skills and/or capabilities; and each of the Programs and Activities in connection therewith shall be, and shall be deemed to be, part of an IMSE Case. Although the Faculty member is not obligated to agree to perform General Services, IMSE agrees to pay the General Remuneration with the expectation that the Faculty Member would agree to participate in two or more of the Programs and Activities offered each year by IMSE.

4.2 The Faculty Member's General Services may include work, consultation, input, advice and/or other services related to CME, a class of inventions or products that is the subject of an IMSE Case or other matters related to the Mission. The General Services may include, by way of example and not limitation, researching, testing, providing input and/or advice in connection with, drafting of papers or drawing, revising, editing and critiquing, creating, contributing to CME programs, participating in problem solving sessions, and otherwise participating in the achievement of the Mission.

4.3 Notwithstanding anything contained herein to the contrary, for convenience or other reasons, IMSE and the Faculty Member may, from time to time, set or modify assignments, subject matter, timetables and all matters related to General Services upon mutual agreement, which agreement must be in writing (email or other electronic communications being sufficient), and shall not impair, or otherwise be deemed to alter or amend this Agreement, constitute any form of novation or be considered a material change to this Agreement.

5. Special Undertakings:

5.1 Collaborator Researcher Undertaking:

5.1.1 In addition to, and separate from General Services, IMSE may by a *Sub-Agreement for Collaborator Researcher Undertaking* signed by IMSE and the Faculty Member, contract with the Faculty Member to act as a "Collaborator Faculty Member" who shall participate in the Collaborator Researcher Undertaking as a collaborator, inventor, designer, researcher or in a similar capacity, on a specific project described in the *Sub-Agreement for Collaborator Researcher Undertaking* or such other document agreed to by the parties in writing. The Collaborator Researcher Undertaking may include work, consultation, and/or other services related to a specific CME program or an invention or product owned or created by IMSE, one or more of the Faculty Members, or a third party, and may include, as well, providing services in connection with any specifically defined matter in connection with an IMSE Case agreed to by both parties hereto. The nature of the services shall be defined by the *Sub-Agreement for Collaborator Researcher Undertaking* or any other written agreement between the parties, and may include, by way of example and not limitation, researching, testing, drafting of papers or drawing, inventing, providing input or advice in connection with, experimenting, revising, editing and critiquing, creating, delivering or contributing to CME programs, participating in

problem solving sessions, and otherwise participating in the achievement of the Mission as it specifically relates to such Collaborator Researcher Undertaking.

5.1.2 Collaborator Faculty Member and IMSE shall commence the Collaborator Researcher Undertaking within a reasonable time period, and according to the schedule set forth in the *Sub-Agreement for Collaborator Researcher Undertaking* or other document in writing related thereto, or if none is stated, within a reasonable time after the *Sub-Agreement for Collaborator Researcher Undertaking* or such document shall have been executed. The Collaborator Faculty Member and IMSE shall use good faith efforts to conduct such Collaborator Researcher Undertaking substantially in accordance with the terms and conditions of the *Sub-Agreement for Collaborator Researcher Undertaking*, such other written document related thereto, and this Agreement. The Collaborator Faculty Member acknowledges that IMSE shall have the right and freedom to conduct and supervise the Collaborator Researcher Undertaking in a manner consistent with IMSE's Mission.

5.1.3 IMSE shall be entitled to designate, in its sole discretion, any person, including, without limitation, one of the Faculty Members to serve as a supervisor of the Faculty Member or as a principal investigator.

5.1.4 Notwithstanding anything to the contrary contained herein, or in any *Sub-Agreement For Collaborator Researcher*, if the Collaborator Faculty Member ceases to perform services in connection with a Collaborator Researcher Undertaking before it shall have been completed, or if the Collaborator Faculty Member resigns as a Faculty Member (which he may do by terminating this Agreement in accordance with Section 3 or Section 9a), fails to perform properly as a Collaborator Faculty Member (in the sole and reasonable determination of IMSE), becomes deceased, otherwise become unavailable, or fails to perform or complete the Collaborator Researcher Undertaking for any reason, IMSE, in its sole reasonable discretion, shall be entitled to take whatever remedial action it deems appropriate, including, *inter alia*, designating another person as a substitute for the Collaborator Faculty Member, terminating or otherwise affecting the Collaborator Researcher Undertaking, performing and/or completing the Collaborator Researcher Undertaking or any other action. In the event that the Collaborator Faculty Member does not perform or complete the Collaborator Researcher Undertaking, subject to Section 3, IMSE shall determine in its sole discretion the amount of compensation, if any, including terms and method of payment that shall be paid to the Collaborator Faculty Member to compensate for the contribution of the Collaborator Faculty Member to the Collaborator Researcher Undertaking.

5.1.5 Notwithstanding anything to the contrary herein, or in any Sub-Agreement for Collaborator Researcher Undertaking, IMSE shall have the sole and exclusive right to terminate, amend, or modify any Collaborator Researcher Undertaking (including any Sub-Agreement for Collaborator Researcher related thereto) at any time and for any reason.

5.1.6 IMSE shall own and possess all right, title and interest in and to the results and all byproducts of the Collaborator Researcher Undertaking as well as the Collaborator Intellectual Property including, *inter alia*, all Research, patents, copyrights, software, designs, products, improvements, enhancements, concepts, tangible and intangible materials, and any matter recognized under the law as intellectual property. In addition, IMSE shall have the exclusive rights to commercialize, license, market, manufacture, brand, sell, convey, and make every other use of the Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking.

5.1.7 The Collaborator Faculty Member, in the absence of an event or condition described in Section 5.1.4 shall be paid for contributing to the Collaborator Researcher Undertaking, an amount in accordance with the terms and conditions set forth in the *Sub-Agreement For Collaborator Researcher* or any other agreement in writing signed by both parties related thereto which amount shall include compensation of no less than \$400 per hour and such other compensation, if any, as set forth therein. Said payments shall be the total, complete and full compensation owed for, and on account of the Collaborator Faculty Member's contributions to, and rights in the Collaborator Researcher Undertaking, including but not limited to the Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking, subject to the terms of Section 3 of this Agreement.

5.1.8 IMSE shall control the preparation and prosecution of all patent applications and the maintenance of all patents related to Collaborator Intellectual Property, as well as the results and all byproducts of the Collaborator Researcher Undertaking. IMSE and the Collaborator Faculty Member shall fully cooperate and assist in all patent prosecution. In addition, each party shall have a duty to provide the other with full and detailed disclosures of all potential Intellectual Property growing out of, or related to, the Collaborator Researcher Undertaking, including, but not limited to, potential patentable matter, products, designs, plans and improvements, as well as any potentially copyrightable software created in the conduct of the Collaborator Researcher Undertaking and/or any and all work, work product, content, instructional design, and delivery including any recordings of the presentation of any CME Course in which the Faculty Member was involved.

5.1.9 All things, both tangible and intangible, regardless of the form or media used to record it that shall be, or shall have been, developed, created, considered or used, directly or indirectly, in connection with the Collaborator Researcher Undertaking, unless disclosed previously in writing to the public, intentionally and/or deliberately by any third party or IMSE, or is in the public domain, shall be deemed to be, and shall be the confidential, proprietary matter, and the trade secrets of IMSE, and shall be known herein as "*Collaborator Researcher Undertaking Trade Secrets*". In addition, *Collaborator Researcher Undertaking Trade Secrets* shall be deemed to be, and shall be Confidential Information, as defined above. For purposes of illustration, and not by way of limitation, *Collaborator Researcher Undertaking Trade Secrets* shall include, but not be limited to the results and all byproducts of the Collaborator Researcher Undertaking, including but not limited to: Intellectual Property; Research; work papers; material that would or could be included in patent applications and applications for copyrights; software, apps and programs developed or modified; designs; drawings; developments; work papers, memoranda, journals and journal entries, notes and rough drafts; matters pertaining to models and prototypes of, as well as improvements and enhancements to, and working and finished products; electronic documents; emails; correspondence; and all records, regardless of the medium used to make the record; and ideas, concepts, tangible and other intangible materials as well as all matter recognized under the law as intellectual property.

5.1.10 Except as directed by IMSE, and/or as required by law, and/or as allowed expressly pursuant to permission granted in writing by IMSE, the Collaborator Faculty Member, as well as all servants, agents and employees of the Collaborator Faculty Member, and every entity in which the Collaborator Faculty Member has an interest shall not, during the Term of this Agreement, use or disclose any portion of the Collaborator Researcher Undertaking Trade Secrets

and/or anything mentioned above in Section 5.1.9. Notwithstanding anything herein to the contrary, following the Term, Faculty Member shall not be precluded from nor prohibited in any way from working with any other entity or person to consult, advise, develop or provide other services in conflict with any products or devices worked on as a Faculty Member.

5.1.11 All participation by the Collaborator Faculty Member in the Collaborator Researcher Undertaking, and all services provided by the Collaborator Faculty Member in connection with the Collaborator Researcher Undertaking, shall be in the role of an independent contractor. The parties expressly state, and acknowledge that the Collaborator Faculty Member is not an employee, servant, agent, joint venturer or partner of IMSE, and nothing contained in this Agreement may be properly interpreted to establish any form of relationship that would create a relationship of principal and agent between IMSE and the Collaborator Faculty Member; provided further that this Agreement shall not be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

5.1.12 Faculty Member represents and warrants to IMSE that entering into this Agreement and performing the services specified herein will not violate any obligations to, or contract with any employer or third parties. Faculty Member further represents and warrants that she/he has advised IMSE in writing prior to the date of signing this Agreement of any relationship with third parties which would present a conflict of interest with his providing services under this Agreement. Faculty Member certifies that no collateral benefit has been offered to or for the benefit of Faculty Member or any of Faculty Member's family members for participating in this Agreement such as promises of gifts, future employment, or travel that is not related to this Agreement and that Faculty Member shall promptly inform IMSE in writing in the event any conflict of interest that arises during this Agreement.

5.1.13 Faculty Member represents and warrants to, and covenants with, IMSE that he shall (i) provide all services under this Agreement in a professional and workman-like manner, (ii) devote such time as may be reasonably necessary for the proper performance of the services, (iii) comply with all laws, regulations, Institutional and/or Internal Review Boards, rules and/or regulations by virtue of the Faculty Member's affiliation with any professional group and/or institution he/she is affiliated with and all other ethical and legal requirements applicable to the use of the results and laws controlling the export of technical data, computer software, laboratory prototypes and all other export control commodities.

5.2 IMSE as Purchaser or Developer of Faculty Member's Property:

5.2.1 In addition to, and separate from the General Services (and distinct from services in connection with a Collaborator Researcher Undertaking), IMSE and Faculty Member may enter into a *Sub-Agreement for the Purchase or Development of Faculty Member's Property* or any written agreement mutually agreed upon by the parties hereto by which IMSE may contract with Faculty Member to work on a specific project in connection with property belonging to Faculty Member ("Faculty Member's Property"). It is contemplated that said property would be in the form of, but not limited to, research, technology, designs, illustrations, plans, concepts, devices, products, inventions or other intellectual property or the like and that the *Sub-Agreement for the Purchase or Development of Faculty Member's Property* or such other agreement signed in writing by both parties, would be for IMSE to purchase or develop any such property owned all or in part by the Faculty Member (the "Faculty Property Undertaking").

5.2.1 The terms of any *Sub-Agreement for the Purchase or Development of Faculty Member's Property* shall be determined based on the nature of the Faculty Member's Property and agreed to by both parties hereto in writing.

5.2.2 Unless expressly stated otherwise in the *Sub-Agreement for the Purchase or Development of Faculty Member's Property* or any other document agreed to in writing by the parties, all services provided by the Faculty Member, IMSE or any third party in connection with the development, improvement of, patenting, input in connection with, advice related to, design, engineering, conceptualization, commercialization, intellectual property, research, development, or other matter related to the Faculty Member's Property shall be treated as Faculty Member's and deemed the property of and belonging to Faculty Member, and Faculty Member shall have all rights, title and claims thereto. Faculty Member must agree in writing for the parties to share or divide ownership, possession, right, title, interest and/or claims in connection with the product, results, intellectual property and/or byproducts of the Faculty Property Undertaking, including, inter alia, all research, patents, copyrights, software, designs, products, improvements, enhancement, concepts, tangible and intangible materials, and any matter recognized under the law as intellectual property. In addition, all of the following rights belong to Faculty Member unless otherwise agreed to in writing: to commercialize, license, market, manufacture, brand, sell, convey and make every other use of the results, products or byproducts in connection with the Faculty Property Undertaking.

5.2.3 Sums paid pursuant to the *Sub-Agreement for the Purchase or Development of Faculty Member's Property* as a royalty or any other payments shall be separate and in addition to any other sums paid under this Agreement to Faculty Member.

6. Relationship of the Parties:

6.1 All participation by the Faculty Member in matters covered by this Agreement, and all services provided by Faculty Member, shall be in the role of an independent contractor. The parties expressly state and acknowledge that Faculty Member is not an employee, servant, agent, joint venturer or partner of IMSE, and nothing contained in this Agreement may be properly interpreted to establish any form of relationship that would create a relationship of principal and agent between IMSE and Faculty Member; provided further that this Agreement shall not be construed as creating any form of legal association or arrangement which would impose liability upon one party for the act or failure to act of the other party.

6.2 Faculty Member acknowledges that Faculty Member is not an agent, servant or employee of IMSE for any purpose and, therefore, is not entitled to the benefits provided by IMSE to its employees, including, but not limited to, fringe benefits, worker's compensation, health and unemployment insurance, and pension plans or any other employee benefit. IMSE shall not pay federal or state withholding taxes in connection with the services provided by Faculty Member under this Agreement, and Faculty Member agrees to report and pay all applicable taxes.

6.3 Each of Faculty Member and IMSE represents and warrants to the other that such party's entering into this Agreement and performing such party's obligations specified herein will not violate any obligations to, or contract/s with, any employer or third parties. Faculty Member further represents and warrants that he has advised IMSE in writing prior to the date of signing this Agreement of any relationship with third parties which would present a conflict of interest with his providing services under this Agreement and covenants that he shall not during

the Term enter into any relationship with any third party that would be a conflict of interest with the services to be provided under this Agreement.

7. Ownership of Work Product and Confidentiality:

7.1 Faculty Member hereby irrevocably transfers and assigns to IMSE all right, title and interest in, and to, all materials and deliverables created, discovered, invented, developed or prepared directly and solely in connection with an IMSE Case assigned to the Faculty Member pursuant to the terms of this Agreement, as well as all Intellectual Property and Research (known collectively as "Results") related to such IMSE Case. Such transfer and assignment only applies to a specific IMSE case directly assigned to Faculty Member by IMSE and excludes a Faculty Property Undertaking. Such transfer and assignment includes, without limitation, all copyrights, trade secrets, inventions (whether patentable or not), plans, products, designs, improvements, CME courses, and all other rights in and/or related, directly or indirectly to the Results (all of which shall be included in the definition of "Results") as related to such IMSE Case. Each of Faculty Member and IMSE represents and warrants to the other that, with respect to himself or itself, that the services he or it shall have performed, and his or its work on, and/or transfer of rights to the other, do not and shall not violate or infringe upon a third party's patent, copyright, trade secret or other intellectual or proprietary right, and that no third party has an ownership interest in the Results through him or it.

7.1.1 Faculty Member acknowledges that IMSE may provide immediate technological and engineering expertise and support, and IMSE may immediately modify, enhance, correct, improve or otherwise contribute to a product, invention, concept or other matter of the Faculty Member. In those cases where IMSE has made a contribution that conceives of at least one limitation of a current or future patent claim, Faculty Member expressly consents to adding IMSE personnel who conceived of the contribution as a co-inventor to any current or future patent application as required by law. Faculty Member expressly consents to adding IMSE personnel who conceived of the contribution as a co-inventor in all cases including an IMSE Case, a Special Undertaking, a Collaborator Researcher Undertaking, a Faculty Property Undertaking or any other project.

7.2 Notwithstanding anything contained herein to the contrary, all things, tangible or intangible, regardless of the form or media used to record it that shall be, or shall have been, developed, created, considered, discussed, conceptualized or used, directly or indirectly, in connection with any IMSE Case specifically assigned to Faculty Member shall be deemed Confidential Information and, to the greatest extent permissible under applicable law, trade secrets of IMSE ("IMSE Trade Secrets").

7.3 For purposes of illustration, and not by way of limitation, IMSE Trade Secrets shall include, but not be limited to, the Results and all byproducts of services or work performed by Faculty Member directly in connection with a specific IMSE Case assigned to Faculty Member under the terms of this Agreement (except pursuant to a *Sub-Agreement for the Purchase or Development of Faculty Member's Property* unless otherwise agreed therein), including but not limited to: Intellectual Property; Research; work papers; material that would or could be included in patent applications and applications for copyrights; software, apps and programs developed or modified; designs; drawings; developments; work papers, memoranda, journals and journal entries, notes and rough drafts; matters pertaining to models and prototypes of, as well as improvements and enhancements to, and working and finished products; electronic documents;

emails; correspondence; and all records, regardless of the medium used to make the record; and ideas, concepts, tangible and other intangible materials as well as all matter recognized under the law as intellectual property and/or any other form of property.

7.4 Faculty Member agrees to accept and hold Confidential Information in confidence at all times during the Term. Except as directed by IMSE and/or as required by law, and/or as allowed expressly pursuant to permission granted in writing by IMSE, the Faculty Member, as well as all servants, agents, attorneys and employees of the Faculty Member, and every entity in which the Faculty Member has an interest shall not, during the Term, disclose any portion of the Confidential Information or use the Confidential Information except in performing General Services or as needed to perform a Special Undertaking.

8. **Assignment:** The rights granted in, and the obligations owed to a party by virtue of this Agreement may not be transferred, conveyed, pledged or assigned by a party, whether by operation of law or otherwise, except with the prior written permission of the other party. No portion of this Agreement may be subcontracted by the Faculty Member without the prior written approval of IMSE. No duty may be delegated or transferred from a party, and no party shall be relieved or discharged from any obligation hereunder, except upon obtaining prior written consent from the other party. Provided however, upon written notice to the Faculty Member, IMSE may transfer to any successor all, or a part of, its right title and interest in this Agreement, and may also transfer and delegate to any successor all of its liability, obligations and responsibility for performance and/or IMSE may cause itself to be completely substituted and legally replaced by any successor. Provided further that notwithstanding anything contained herein to the contrary, the Faculty Member may assign, or otherwise transfer to a third party (but not to a creditor of the Collaborator Faculty Member), the right of the Faculty Member to receive the payment of money due to the Faculty Member under this Agreement.

9. **Trademarks of IMSE:** The Faculty Member agrees not to use any name, logo, or trademark owned by IMSE, without the prior written authorization of IMSE.

9a. Termination. Notwithstanding anything to the contrary contained herein, this Agreement, any *Sub-Agreement for Collateral Undertaking*, or any *Sub-Agreement for Faculty Member's Property* (such Sub-Agreements, together the "*Special Undertakings Agreements*") may be terminated by:

9a.1 At Will. Either party shall have the right to terminate the Agreement or any Special Undertakings Agreement at any time upon prior written notice to the other party thirty (30) days in advance of the intended termination date.

9a.2 In the Case of Breach. Either party may terminate the Agreement or any Special Undertakings Agreement in the event of a material breach by the other party, provided that the terminating party is not also in material breach, and provided further that the breaching party shall have a right to cure any such breach if curable within thirty (30) days of receipt of such notice in writing. The Agreement or the applicable Special Undertakings Agreement shall terminate upon the breaching party's receipt of such notice if any such breach is not curable

and upon expiration of the thirty (30) day cure period if such breach is curable but has not been cured on or before such expiration. Any notice pursuant to this Section 00 shall specify the breach(es) on which such termination is based.

9a.3 In the Case of Bankruptcy. Either party has the right to terminate this Agreement immediately upon written notice to the other party in the event the other party (i) becomes unable to pay its debts when due; (ii) files a petition in bankruptcy; reorganization or similar proceeding; (iii) if filed against, such petition is not removed within ninety (90) days after such filing; (iv) in the case of IMSE, discontinues its business; or (v) a receiver is appointed or there is an assignment for the benefit of IMSE's creditors.

9a.4 Effect of Termination. Termination of the Agreement or any Special Undertaking Agreement shall not terminate the rights of either party that accrued through the time of such termination. Termination of this Agreement will, in all cases and automatically, additionally terminate any *Sub-Agreement for Collaborator Research Undertaking* between the parties.

10. Nondiscrimination: IMSE and Faculty Member shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, age, religion, national or ethnic origin, handicap, or because he or she is a disabled veteran or veteran of the Vietnam Era.

11. Governing Law: This Agreement shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of and venue in any state or federal courts (located within Philadelphia, Pennsylvania if in state court or the Eastern District of Pennsylvania if in federal court) with respect to any and all disputes concerning the subject of this Agreement. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, that provision will be deemed amended or stricken (as appropriate) so as to render the remaining portions of the Agreement valid, legal and enforceable.

12. Integration: This Agreement including attachments referenced herein as having been incorporated into the Agreement by reference is the final and entire agreement between the parties with respect to the subject matter set forth herein, and supersedes, and expressly integrates all prior agreements, understandings, discussions, promises, representations, negotiations and statements, whether oral or written. Except as may otherwise be provided herein, neither this Agreement nor any of its provisions may be modified or amended except by an instrument signed by both parties. If there is any ambiguity concerning this Agreement, the parties intend that the ordinary dictionary definition be used, and expressly disclaim reliance on any custom or usage in any industry or amongst the parties.

13. Force Majeure: Neither party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, including, without limitation, labor disturbances or labor disputes of any

kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, terrorism, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

14. **Notice:** Notices, statements, reports and other communications under this Agreement shall be in writing and shall be deemed to have been received as of the date dispatched if sent by USPS certified mail, return receipt requested or by public overnight courier (e.g., Federal Express) and addressed as set forth below; or if sent by email to an email address used by the recipient prior to the date of notice if an email receipt shall have been obtained:

If to IMSE:

Office of Faculty Affairs
Institute for Musculoskeletal Science and Education, LLC
418 East Lancaster, Suite 201
Wayne, PA 19087

If to Faculty Member:

Kenan Aksu, D.O.
390 Waterloo Boulevard, Suite 200,
Exton, PA 19341

15. **Indemnification:**

15.1 Faculty Member shall indemnify, defend and hold harmless IMSE and its directors, officers, employees and agents from and against any and all costs, expenses, damages, judgments and liabilities including attorneys' fees incurred by or rendered against IMSE arising from any claim made or suit brought by a third party arising out of (a) acts or omissions of Faculty Member which constitute negligence or willful misconduct, (b) a breach by Faculty Member of his representations, warranties or obligations under this Agreement, or (c) any personal injury or damage to property relating to or arising out of the Faculty Member's performance under this Agreement, whether based in strict liability in tort, negligent manufacture of product or any other allegation of liability relating to Faculty Member's work performed in accordance with this Agreement.

15.2 IMSE shall indemnify, defend and hold harmless Faculty Member and his agents from and against any and all costs, expenses, damages, judgments and liabilities including attorneys' fees incurred by or rendered against Faculty Member arising from any claim made or suit brought by a third party arising out of (a) acts or omissions of IMSE which constitute negligence or willful misconduct, (b) a breach by IMSE of its representations, warranties or obligations under this Agreement, or (c) any personal injury or damage to property relating to or arising out of IMSE's performance under this Agreement, whether based in strict liability in tort, negligent manufacture of product or any other allegation of liability relating to IMSE's performance of its obligations under this Agreement.

16. **Headings:** Section headings in this Agreement are for convenience of reference only and will not affect its interpretation.

17. **Interpretation:** Each party hereto acknowledges and agrees that: (a) it and/or its counsel reviewed and negotiated the terms and provisions of this Agreement and has contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (c) the terms and provisions of this Agreement shall be construed fairly as to both parties hereto and not in favor of or against either party, regardless of which party was generally responsible for the preparation of this Agreement.

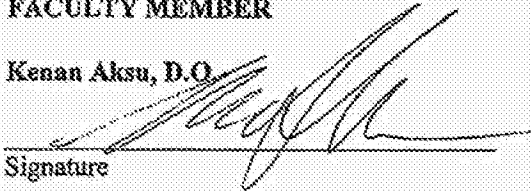
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INTENDING TO BE LEGALLY BOUND, the parties have signed and sealed this Agreement in Pennsylvania on the dates set forth below:

FACULTY MEMBER

Kenan Aksu, D.O.

Signature



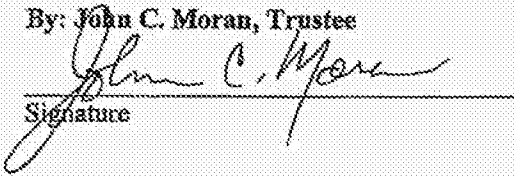
Date

4/19/17

**INSTITUTE OF MUSCULOSKELETAL SCIENCE
AND EDUCATION, LLC**

By: John C. Moran, Trustee

Signature



Date

4/21/17

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