

LICENSE AGREEMENT

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This AGREEMENT, effective this 31st day of December, 1993, is by and between Sofamor Danek Group, Inc. (hereinafter referred to as "Danek"), a corporation organized and existing under the laws of the State of Indiana and with its principal offices located at 3092 Directors Row, Memphis, Tennessee 38131, and Karlin Technology, Inc. (hereinafter referred to as "KTI"), a corporation organized and existing under the laws of the State of California and with its principal offices located at 4929 Premier Avenue, Lakewood, California 90712.

W I T N E S S E T H

WHEREAS, Danek, by and through its subsidiaries, is in the business of researching, designing, developing and marketing medical devices used in connection with orthopedic and spinal surgery;

WHEREAS, KTI has developed a Medical Device (as hereinafter defined) which utilizes certain Technology (as hereinafter defined) and has also obtained a license for third party patents for implants pursuant to a Prior Agreement (as hereinafter defined);

WHEREAS, Danek desires to obtain from KTI a license for the Technology and the Medical Device and all rights licensed to KTI pursuant to the Prior Agreement and further desires to obtain from KTI an option to purchase the same from KTI; and

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PLAINTIFF'S  
EXHIBIT  
CASE  
NO. 08CV 01512  
EXHIBIT  
NO. PX2338

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WHEREAS, KTI desires to grant such license and option to purchase the Technology and the Medical Device and all rights licensed to KTI under the Prior Agreement to Danek.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, and subject to the terms and conditions hereof, Danek and KTI agree as follows.

1. Definitions.

1.1 Effective Date. Effective Date shall mean December 31, 1993.

1.2 Medical Device. Medical Device shall mean a threaded implant or threaded implants for use in spinal surgical or stabilization procedures and instruments and methods related thereto, which utilize the Technology and are Michelson's invention as disclosed in the patent and patent applications listed in Disclosure Schedule 3.2, whether claimed or not, or whether issued or not.

1.3 Net Sales.

(a) Net Sales shall mean the invoice price charged for the Medical Device (a) with respect to sales or leases made in the United States by Danek less (i) any refunds, credits or allowances actually given to customers for returns of the Medical Device, (ii) any discounts actually given or credited to third parties, and (iii) any commissions actually paid or credited to third parties; and (b) with respect to sales or leases made outside of the United States by Danek less (i) any refunds, credits or

allowances actually given for returns of the Medical Device, (ii) any discounts actually given or credited to third parties, (iii) any commissions actually paid or credited to third parties; and (iv) extraordinary expenses relating to sales in foreign countries, such as import duties, taxes, transportation and the like. For purposes of this definition, a Medical Device shall be considered to have been sold or leased on the date of the invoice for the Medical Device.

(b) In the event that a threaded spinal implant sold or leased by Danek is not within the definition of Medical Device (hereinafter "Other Implant"), but nonetheless requires the use of covered KTI instruments licensed or assigned to Danek by KTI hereunder for both predistractation and performing the implant procedure through a fixed tubular member, then the invoice price charged by Danek for such Other Implant shall be included in Net Sales under this Agreement.

1.4 Technology. Technology shall mean any United States and foreign patents and patent applications and future applications, including, without limitation, any amendment, continuation, division, reissue and reexamination thereof, and any know-how, trade secrets or confidential information, proprietary rights, processes, engineering/design/technical information and data pertaining to the Medical Device which KTI has heretofore developed, acquired or licensed as listed on Disclosure Schedule 3.2, or which KTI may develop, acquire or license after

the Effective Date hereof, whether or not subject to the Prior Agreement.

2. License; Option to Purchase Technology.

2.1 Grant of License. KTI hereby grants to Danek worldwide, sole and exclusive right and license, subject only to the limitation in Section 2.3 below, to use and practice the Technology and to make, have made, use and sell the Medical Device which utilizes the Technology.

2.2 Right to Grant Sublicenses. The rights granted to Danek under the terms of this Agreement shall include the right of Danek to grant a sublicense to any company or legal entity which is acting in concert with Danek to the full extent permitted by the Prior Agreement.

2.3 Scope of License. The scope of the sole and exclusive license, and all other rights granted to Danek under the terms of this Agreement, is limited only by the May 10, 1992 license agreement between KTI, G. Karlin Michelson, M.D. (hereinafter referred to as "Michelson") and Spine-Tech, Inc. of Minneapolis, Minnesota (hereinafter referred to as the "Prior Agreement"), a copy of which has been provided to Danek but with the financial terms and drawings attached thereto deleted. Danek agrees to assume all of the obligations set forth in the Prior Agreement which are necessary condition precedents to the right of KTI to grant the license to Danek under the Prior Agreement. To the extent that the Prior Agreement is interpreted, amended or modified so that greater or additional rights can be

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granted to Danek by KTI, those rights will automatically be included within the scope of the license granted to Danek under this Agreement without additional consideration, including without limitation the license becoming, either in whole or in part, solely exclusive to Danek, provided, however, that the Prior Agreement shall not be interpreted, amended or modified in any way to limit the rights granted to Danek herein and further, provided, that Danek shall be notified in writing in advance of any re-negotiation with respect to the Prior Agreement and Danek shall have the right to participate in any such negotiation with respect to any such interpretation, amendment or modification. KTI and Michelson shall have the sole right to agree to the terms of such modification, subject to the limitations above. Except as provided herein, KTI and Michelson shall control and be responsible for any disputes between KTI, Michelson and Spine-Tech.

2.4 Option to Purchase. KTI hereby further grants to Danek the right to purchase the Technology and the Medical Device on or after December 31, 1996, owned by KTI for the sum of One Thousand Dollars (\$1,000), which option Danek can exercise upon written notice to KTI at any time on or after December 31, 1996. In the event that Danek exercises this option to purchase the Technology and the Medical Device, it is understood and agreed to by Danek that any funds due KTI, and any records related thereto, under the Prior Agreement shall continue to be paid or given by Spine-Tech directly to KTI, and Danek shall have no right of any kind in such funds and records.

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