UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **June 19, 2023**

Nuwellis, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-35312**	**No. 68-0533453**
(State or Other Jurisdiction of Incorporation or Organization)	(Commission File Number)	**(I.R.S. Employer Identification No.)**

12988 Valley View Road, Eden Prairie, MN 55344
(Address of Principal Executive Offices) (Zip Code)

(952) 345-4200
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	NUWE	Nasdaq Capital Market

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Supply and Collaboration Agreement

On June 19, 2023, Nuwellis, Inc. (the "***Company***") entered into a Supply and Collaboration Agreement (the "***Supply Agreement***") with DaVita Inc., a Delaware corporation ("***DaVita***"), pursuant to which DaVita will pilot the Aquadex ultrafiltration therapy system to treat adult patients with congestive heart failure and related conditions within select U.S. markets. The pilot program is expected to launch by the end of the third quarter 2023 and extend through May 31, 2024 (the "***Pilot***"). Through the Pilot, ultrafiltration therapy using Aquadex will be offered at a combination of DaVita's customer hospital and outpatient center locations, with both companies collaborating on the roll-out of the therapy, clinician training, and patient support. At the conclusion of the pilot, DaVita has the option, in its sole discretion, to extend the Supply Agreement with the Company for continued provision of both inpatient and outpatient ultrafiltration services for up to 10 years ("***Ultrafiltration Services Approval***").

If, at any time during the term of the Supply Agreement, the Company makes available any new products for the treatment of congestive heart failure that offer technological advancements or improved clinical outcomes, patient care, or streamlined work processes, as compared to existing products of the Company ("***New Products***"), the Company shall notify DaVita at least sixty days prior to the release of such New Products and, within such sixty-day period, the Company shall (a) provide DaVita with the first opportunity to purchase or rent the New Product(s) at discounts comparable to those that are applicable to the New Products offered pursuant to the Supply Agreement, (b) provide any information about the New Product(s) as reasonably requested by DaVita, and (c) meet with DaVita and its clinical committees to discuss the clinical, technological, and operational benefits of the New Product(s).

The Supply Agreement contains standard representations and warranties of the Company for a transaction of this nature as well as customary indemnification and confidentiality provisions.

Common Stock Warrant Agreement

In conjunction with the Supply Agreement, the Company issued DaVita a warrant to purchase up to an aggregate of 1,289,081 shares of common stock of the Company, par value $0.0001 per share, at an exercise price of $3.2996 per share, provided that at no time can it be exercised for an amount of shares that would represent greater than 19.9% ownership in the Company (the "***Warrant***") subject to certain vesting milestones. The Warrant is expected to vest in four tranches as follows: (i) 25% upon receipt of notice to extend the Supply Agreement past the initial pilot-term; (ii) 25% upon the attainment by the Company of a net revenue achievement from DaVita's efforts pursuant to the Supply Agreement within twelve months of Ultrafiltration Services Approval; (iii) 25% upon the attainment by the Company of a net revenue achievement from DaVita's efforts pursuant to the Supply Agreement within twenty-four months of Ultrafiltration Services Approval; and (iv) 25% upon the attainment by the Company of a net revenue achievement from DaVita's efforts pursuant to the Supply Agreement within thirty-six months of Ultrafiltration Services Approval.

Additionally, upon its delivery of the Ultrafiltration Services Approval, DaVita will be awarded for two years, the right to participate in any future offering pursuant to an effective registration statement or private placement ("***Subsequent Financing***") of the Company, subject to the terms and conditions as set forth in the Warrant, on the same terms, conditions and price provided in such future financing. DaVita shall have the right to purchase up to 19.9% of the securities being offered in such Subsequent Financing.

Registration Rights Agreement

Concurrent with the signing of the Supply Agreement and Warrant, the Company entered into a Registration Rights Agreement ("***Registration Rights Agreement***") with DaVita, whereby the Company agreed, subject to DaVita's delivery of the Ultrafiltration Services Approval, to register the resale of the shares of Common Stock issuable upon exercise of the Warrant ("***Underlying Shares***") on a Form S-1 or Form S-3, if eligible, upon DaVita's demand. DaVita has "piggyback" registration rights allowing it to include its Underlying Shares in a registration effected by the Company for stockholders other than DaVita. The Company is responsible for all fees and expenses incident to the performance of or compliance with the Registration Rights Agreement borne by the Company whether or not any registrable securities are sold pursuant to a registration statement. The Registration Rights Agreement also contains customary indemnification provisions.

The foregoing description of the Supply Agreement, Warrant, and Registration Rights Agreement are not complete and are qualified in their entirety by reference to the Supply Agreement, Warrant and Registration Rights Agreement, which are each attached hereto as Exhibits 10.1, 4.1 and 10.2, respectively, and incorporated herein by reference.

On June 20, 2023, the Company issued a press release announcing the signing of the Supply Agreement. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K relative to the Warrant and Registration Rights Agreement is incorporated herein by reference. The Company's issuance of the Warrant was made in reliance upon the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act of 1933, as amended (the ***"Securities Act"***), and Rule 506 of Regulation D promulgated thereunder.

Forward-Looking Statements

This Form 8-K contains forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995, including without limitation, statements regarding the expectedness of the Supply Agreement and the Pilot and post-Pilot activities detailed therein. Forward-looking statements are usually identified by the use of words, such as "believes," "anticipates," "expects," "intends," "plans," "may," "potential," "will," "could" and similar expressions. Actual results may differ materially from those indicated by forward-looking statements as a result of various important factors and risks. These factors, risks and uncertainties include, but are not limited to: (1) the structure, timing and ability to satisfy the tranches set forth in the Warrant; (2) the Company's ability to be continued to be listed on the NASDAQ Capital Market; (3) the ability to realize the benefits of the Supply Agreement, including the success of the Pilot and the possibility of an extended term; (4) the ability to adapt and integrate New Product(s); (5) costs related to the Supply Agreement, known and unknown, including costs of any litigation or regulatory actions relating to the Supply Agreement; and (6) changes in applicable laws or regulations. Please refer to the Company's most recent annual report on Form 10-K, as well as the Company's subsequent filings on Form 10-Q and Form 8-K, which are available on the SEC's website (www.sec.gov), for a full discussion of the risks and other factors that may impact any forward-looking statements in this Form 8-K. In addition, the forward-looking statements included in this Form 8-K represent the Company's views as of the date hereof. The Company anticipates that subsequent events and developments will cause its views to change. However, while the Company may elect to update these forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so. These forward-looking statements should not be relied upon as representing the Company's views as of any date subsequent to the date hereof.

Item 8.01 Other Events.

On June 20, 2023, the Company issued a press release announcing the transactions disclosed herein. A copy of the press release is furnished herewith as Exhibit 99.1 hereto and incorporated herein by reference.

The information in this Item 8.01, including Exhibit 99.1 attached hereto, is being furnished, shall not be deemed "filed" for any purpose, and shall not be deemed incorporated by reference in any filing under the Securities Act or the Securities Exchange Act of 1934, as amended, except as expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Description
4.1*	Common Stock Warrant Agreement
10.1*	Supply and Collaboration Agreement dated as of June 19, 2023 by and between the Company and DaVita Inc.
10.2	Registration Rights Agreement dated as of June 19, 2023 by and between the Company and DaVita Inc.
99.1	Press Release, dated June 20, 2023
104	Cover Page Interactive Data File (embedded within Inline XBRL document).

*Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request. Certain portions of the Warrant and the Supply Agreement have been redacted pursuant to Item 601(b)(10)(iv) of Regulation S-K because the Company customarily and actually treats the redacted information as private or confidential and the omitted information is not material. Copies of the unredacted Warrant and Supply Agreement will be furnished to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: June 20, 2023

NUWELLIS, INC.

By: /s/ Nestor Jaramillo, Jr
Name: Nestor Jaramillo, Jr.
Title: President and Chief Executive Officer

Exhibit 4.1

Certain identified information has been excluded from the exhibit because it is both not material and is of the type that the Company treats as private or confidential. Double asterisks denote omissions.

NEITHER THIS WARRANT NOR THE SECURITIES THAT MAY BE ISSUED UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), OR ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THIS WARRANT, AGREES FOR THE BENEFIT OF THE ISSUER THAT THIS WARRANT MAY NOT BE OFFERED, RESOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF BY THE HOLDER ABSENT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT EXCEPT (I) TO THE ISSUER OR A SUBSIDIARY THEREOF OR (II) PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NUWELLIS, INC.

COMMON STOCK WARRANT AGREEMENT

Underlying Shares: 1,289,081(subject to adjustment in accordance with Section 4)

Original Issue Date:

FOR VALUE RECEIVED, Nuwellis, Inc. a Delaware corporation (the "***Company***" or "***Nuwellis***"), hereby certifies that DaVita, Inc., a Delaware corporation ("***Holder***") is, subject to the terms and conditions set forth in this Common Stock Warrant Agreement (the "***Warrant***"), entitled to purchase from the Company 1,289,081shares (subject to adjustment in accordance with Section 4) par value $0.0001 per share of the Company's common stock (the "***Common Stock***") (the "***Underlying Shares***").

This Warrant is being entered into in connection with that certain Supply and Collaboration Agreement dated as of the date hereof (as the same may be amended, supplemented or otherwise modified from time to time, the "***Supply Agreement***"), by and between Nuwellis and the Holder. Defined terms used in this Warrant but not defined herein shall have the meanings given to them in the Supply Agreement. For the avoidance of doubt, whenever this Warrant references terms of, or provisions being in accordance with provisions of, the Supply Agreement, such terms and provisions of the Supply Agreement shall be deemed to be incorporated into this Warrant and be part hereof as though set forth herein.

1. Definitions.

"***Business Day***" means any day other than Saturday, Sunday or other day on which commercial banks in the city of New York are authorized or required by law to remain closed.

"***Change of Control***" shall mean the purchase of all or substantially all of the assets or equity interests of the Company (or any successor entity) whether by reorganization, merger, sale of assets, or sale of equity interests other than: (i) a sale of the Company's equity interests in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities; or (ii) as a result of the exercise of the Warrant.

"***Convertible Securities***" means any stock or other security of any kind (other than Options) that is at any time and under any circumstances, are directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

"***First Tranche Milestone Date***" shall have the meaning set forth on **Exhibit A**.

"***First Tranche Milestone Shares***" shall have the meaning set forth on **Exhibit A**.

"***Fourth Tranche Milestone Date***" shall have the meaning set forth on **Exhibit A**.

"***Fourth Tranche Milestone Shares***" shall have the meaning set forth on **Exhibit A**.

"***Milestone Dates***" means, collectively, the First Tranche Milestone Date, the Second Tranche Milestone Date, the Third Tranche Milestone Date and the Fourth Tranche Milestone Date.

"***Milestone Shares***" means, collectively, the First Tranche Milestone Shares, the Second Tranche Milestone Shares, the Third Tranche Milestone Shares and the Fourth Tranche Milestone Shares.

"***New Securities***" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

"***Options***" means any rights, warrants or options of any kind to subscribe for or purchase shares of Common Stock or Convertible Securities.

"***Person***" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

"***Second Tranche Milestone Date***" shall have the meaning set forth on **Exhibit A**.

"***Second Tranche Milestone Shares***" shall have the meaning set forth on **Exhibit A**.

"***Standard Settlement Period***" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

"***Third Tranche Milestone Date***" shall have the meaning set forth on **Exhibit A**.

"***Third Tranche Milestone Shares***" shall have the meaning set forth on **Exhibit A**.

"***Trading Day***" means a day on which the Common Stock is traded on a Trading Market.

"***Trading Market***" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"***Transfer Agent***" means American Stock Transfer & Trust Company, LLC, the Company's transfer agent and registrar for the Common Stock, and any successor appointed in such capacity.

2. Warrant Register. Company shall register ownership of this Warrant upon records to be maintained by the Company for that purpose, in the name of the record Holder (which shall include the initial Holder or, as the case may be, any assignee to which this Warrant is assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company shall pay any and all fees and expenses associated with the registration of the Warrant.

3. Exercise of Warrant.

3.1 Exercise Price. "***Exercise Price***" shall be equal to $3.2996 per share (the "***Exercise Price***").

3.2 Vesting.

3.2.1 The First Tranche Milestone Shares shall vest on the occurrence of the First Tranche Milestone Date, and shall be exercisable in whole or in part at any time, and from time to time, on or after the First Tranche Milestone Date and on or before the fifth (5^{th}) anniversary of the First Tranche Milestone Date.

3.2.2 the Second Tranche Milestone Shares shall vest on the occurrence of the Second Tranche Milestone Date, and shall be exercisable in whole or in part at any time, and from time to time, on or after the Second Tranche Milestone Date and on or before the fifth (5^{th}) anniversary of the Second Tranche Milestone Date.

3.2.3 the Third Tranche Milestone Shares shall vest on the occurrence of the Third Tranche Milestone Date, and shall be exercisable in whole or in part at any time, and from time to time, on or after the Third Tranche Milestone Date and on or before the fifth (5^{th}) anniversary of the Third Tranche Milestone Date.

3.2.4 the Fourth Tranche Milestone Shares shall vest on the occurrence of the Fourth Tranche Milestone Date, and shall be exercisable in whole or in part at any time, and from time to time, on or after the Fourth Tranche Milestone Date and on or before the fifth (5^{th}) anniversary of the Fourth Tranche Milestone Date.

3.2.5 Notwithstanding the foregoing, any Milestone Dates that do not occur by the applicable date set forth on **Exhibit A** hereto shall nevertheless be deemed to have occurred upon the achievement of any subsequent Milestone by the applicable Milestone Date for such subsequent Milestone set forth on **Exhibit A**. For example, if the Second Tranche Milestone Date does not occur by the applicable date for the Second Tranche Milestone Date set forth on **Exhibit A** hereto, but the Third Tranche Milestone Date occurs by the applicable date for the Third Tranche Milestone Date set forth on **Exhibit A**, then the Second Tranche Milestone Date shall be deemed to have occurred on the Third Tranche Milestone Date, and the Second Tranche Milestone Shares (in addition to the Third Tranche Milestone Shares) shall be exercisable on or after the occurrence of the Third Tranche Milestone Date and on or before the fifth (5^{th}) anniversary of the Third Tranche Milestone Date.

3.2.6 Notwithstanding anything in this Warrant to the contrary, in the event of (a) a Change of Control or (b) a Failure to Supply Event or other material breach of the Supply Agreement (each, a "***Vesting Acceleration Event***"), all Milestone Shares shall immediately vest and become exercisable in whole or in part, and from time to time, on or after such Vesting Acceleration Event and on or before the fifth (5^{th}) anniversary of such Vesting Acceleration Event.

3.3 Exercise.

3.3.1 Exercise. This Warrant may be exercised, with respect to any vested shares, in accordance with Section 3.2 hereof, in whole or in part, by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form attached hereto as **Exhibit B** (the "***Notice of Exercise***"). Within the earlier of (i) two (2) Trading Days or (ii) the number of Trading Days comprising the Standard Settlement Period following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank. The date on which such Exercise Notice and Exercise Price is delivered to the Company (as determined in accordance with the notice provisions hereof) is an "***Exercise Date***." No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Underlying Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. The Holder and the Company shall maintain records showing the number of Underlying Shares purchased and the date of such purchases.

3.3.2 Issuance of Underlying Shares on Exercise. On or before the second (2nd) Trading Day following the date on which the Company has received such Exercise Notice and Exercise Price (or such earlier date as required pursuant to the Securities Exchange Act of 1934, as amended (the "***Exchange Act***") or other applicable law, rule or regulation for the settlement of a trade of such Underlying Shares initiated on the applicable Exercise Date) (the "***Warrant Share Delivery Date***"), the Company shall cause the Underlying Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the Holder's or its designee's balance account with the Depository Trust Company through its Deposit or Withdrawal at Custodian System ("***DWAC***") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Underlying Shares to or resale of the Underlying Shares by the Holder or (B) the Underlying Shares are eligible for resale pursuant to Rule 144 promulgated under the Securities Act without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Underlying Shares to which Holder is entitled pursuant to such Notice of Exercise by the Warrant Share Delivery Date.

If the Transfer Agent is not participating in the DWAC system or such Underlying Shares are not eligible to be resold pursuant to Rule 144 or an effective registration statement, upon the request of the Holder, the Company shall credit such aggregate number of shares of the Common Stock to which the Holder is entitled pursuant to such Exercise Notice in book entry form with the Transfer Agent. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Underlying Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Underlying Shares, provided that the payment of the Exercise Price was made. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance and delivery of Underlying Shares upon exercise of this Warrant. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable.

3.3.3 Delivery of New Warrants Upon Exercise. If Holder exercises only a portion of the Underlying Shares eligible for exercise under this Warrant (i.e., the Warrant shall not have been exercised in full), the Company shall, at the time of issuance of such Underlying Shares for which the Warrant was exercised, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unexercised Underlying Shares called for by this Warrant. Such new Warrant shall in all other respects be identical to this Warrant. The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder.

3.3.4 Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Underlying Shares pursuant to Section 3.4.2 by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

3.3.5 Failure to Timely Deliver Underlying Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Underlying Shares in accordance with the provisions of Section 3.3.2 above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase, or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Underlying Shares the Holder anticipated receiving upon such exercise (a "***Buy-In***"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the total purchase price (including brokerage commissions, if any) of the Buy-In exceeds (y) the amount obtained by multiplying (1) the number of Underlying Shares that the Company was required to deliver to the Holder in connection with such exercise by (2) the price at which the sell order giving rise to such Buy-In was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Underlying Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its delivery obligations hereunder. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

3.3.6 Conditional Exercise in Connection with Public Offering. Notwithstanding any other provision hereof, if an exercise of any portion of the Warrant is to be made in connection with a public offering or a sale of the Company (pursuant to a merger, sale of stock, or otherwise), such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

3.3.7 Limitations on Exercises. Notwithstanding anything to the contrary contained herein, the Company shall not effect any exercise of this Warrant, and the Holder shall not be entitled to exercise any portion of this Warrant to the extent that, after giving effect, or immediately prior, to such exercise, Holder and its Affiliates, and any other Persons acting as a group together with the Holder (the "***Attribution Parties***"), would beneficially own in excess of the Maximum Percentage (as defined below) (the "***Beneficial Ownership Limitation***"), or if at the time of such exercise, the exercise would violate, or would result in a violation by the Company, of any Nasdaq rule; provided, however, that the foregoing Beneficial Ownership Limitation shall not apply in the event the Company obtains stockholder approval for such exercise pursuant to any Nasdaq requirements.

(a) For purposes of this Section 3.3.7, the aggregate number of shares of the Common Stock beneficially owned by the Holder, its Affiliates and the Attribution Parties shall include the shares of the Common Stock issuable upon such exercise of this Warrant with respect to which such determination is being made pursuant to this Section 3.3.7, but shall exclude the number of shares of the Common Stock which would be issuable upon (x) exercise of the remaining unexercised and non-cancelled portion of this Warrant by the Holder and (y) exercise or conversion of the unexercised, non-converted or non-cancelled portion of any other securities of the Company that do not have voting power (including without limitation any securities of the Company which would entitle the holder thereof to acquire at any time shares of the Common Stock, including without limitation any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of the Common Stock).

(b) Except as set forth in the preceding paragraph or as otherwise set forth herein, for purposes of this Section 3.3.7, beneficial ownership and group status shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(c) For purposes of this Warrant, in determining the number of outstanding shares of the Common Stock, the Holder may rely on the number of outstanding shares of the Common Stock as reflected in (x) the Company's most recent Form 10-Q or Form 10-K, as the case may be, filed with the Commission prior to the date hereof, (y) a more recent public announcement by the Company or (z) any other notice by the Company or the Transfer Agent setting forth the number of shares of the Common Stock outstanding. Upon the written request of the Holder, the Company shall within three (3) Trading Days confirm in writing or by electronic mail to the Holder the number of shares of the Common Stock then outstanding. In any case, the number of outstanding shares of the Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder since the date as of which such number of outstanding shares of the Common Stock was reported.

(d) ***Maximum Percentage*** shall mean 19.99% of (i) the total number of issued and outstanding shares of the Common Stock immediately after giving effect to such exercise or (ii) the combined voting power of the securities of the Company beneficially owned by the Holder, its Affiliates and Attribution Parties then outstanding following such exercise.

(e) Notwithstanding any of the limitations in Section 3.3.7, this Warrant shall be exercisable in full with respect to all Underlying Shares in connection with a Change of Control (excluding any Change of Control between the Company and the Holder); provided, however, that this sentence shall not be given effect to the extent it would conflict with the rules of Nasdaq or any similar rule of any stock exchange on which the Common Stock is listed at the relevant time.

4. Adjustments.

4.1 Stock Dividends and Splits. If the Company (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case, without any further action by the parties hereto, the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall simultaneously be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 4.1 shall automatically become effective immediately after the effective date of the dividend, distribution, subdivision, combination or re-classification.

4.2 Notices of Changes in Warrant. Upon any adjustment of the Exercise Price, the Company shall give prompt written notice thereof to Holder (and in any event within two (2) Trading Days), which notice shall state the Exercise Price and a brief statement of the facts requiring such adjustment.

4.3 Rights Upon Distribution of Assets. In addition to any adjustments pursuant to Section 4 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "***Distribution***"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the total number of shares of Underlying Stock under the Warrant (disregarding for this purpose any limitations or restrictions hereunder on the exercise of the Underlying Shares, including vesting restrictions on Milestone Shares) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

4.4 Change of Control. If, at any time while any portion of this Warrant is outstanding, a Change of Control occurs, then following such Change of Control, the Holder shall have the right to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Change of Control if it had been, immediately prior to such Change of Control, the holder of the number of Underlying Shares then issuable upon exercise in full of this Warrant with respect to all Underlying Shares, without regard to any vesting schedule or other limitations on exercise contained herein (the "***Alternate Consideration***"). The Company shall not effect any Change of Control in which the Company is not the surviving entity or the Alternate Consideration includes securities of another Person unless prior to the consummation thereof, the successor to the Company, surviving entity or other Person (including any purchaser of assets of the Company), as applicable, assumes the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder shall be entitled to receive, and the other obligations under this Warrant. The provisions of this paragraph shall similarly apply to subsequent transactions analogous to a Change of Control. The Company shall provide the Holder with written notice of any contemplated Change of Control not less than ten (10) days prior to the effectiveness of such Change of Control.

4.5 Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

4.6 No Fractional Shares. Notwithstanding any provision contained in this Warrant to the contrary, the Company shall not issue fractional shares upon exercise. If, by reason of any adjustment made pursuant to this Section 4 or otherwise, the holder of the Warrant would be entitled, upon the exercise of the Warrant, to receive a fractional interest in a share of Common Stock, the Company shall, upon such exercise, round down to the nearest whole number the number of shares.

5. Participation in Future Financing

5.1 The Company covenants and agrees that, from and after the Ultrafiltration Services Approval through the second anniversary of the Ultrafiltration Services Approval, prior to any issuance by the Company of New Securities in any (x) offering pursuant to an effective registration statement or (y) private placement (each, a ***"Subsequent Financing"***), the Holder shall have the right to purchase up to 19.9% of the New Securities offered in any such Subsequent Financing (the ***"Participation Maximum"***), on the same terms, conditions and price provided for in the Subsequent Financing; provided, that, unless otherwise agreed in writing by the Company, the Participation Maximum (i) shall in no event exceed the Maximum Percentage and (ii) shall be reduced if and to the extent required (1) by the principal Trading Market in order for the Company to comply with the listing agreement for such Trading Market and (2) to ensure that the Holder's beneficial ownership (as calculated pursuant to Section 3.3.7 hereof) does not exceed the Maximum Percentage.

5.2 As soon as practicable prior to a Subsequent Financing, the Company shall deliver to the Holder a written notice of its intention to effect a Subsequent Financing (and in any event, no later than two (2) Business Days following the earlier of the date the Company (a) proposes to another party or (b) receives a proposal from another party that includes any material terms associated with a Subsequent Financing) (a ***"Pre-Notice"***), which Pre-Notice shall ask the Holder if it wants to review the details of such financing (such additional notice, a ***"Subsequent Financing Notice"***). Upon the request of the Holder, and only upon the request by the Holder, for a Subsequent Financing Notice, the Company shall promptly, but no later than two (2) Business Days after such request, deliver a Subsequent Financing Notice to the Holder. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing that are available at such time that the Subsequent Financing Notice is delivered (which shall include pricing of the securities only if known at such time), recognizing that if the Subsequent Financing is an offering pursuant to an effective registration statement, that there may be minimal details available at the time such Subsequent Financing Notice is delivered as terms will not be set until final pricing negotiations are conducted with the underwriter(s) or placement agent(s). If any material terms described in a Subsequent Financing Notice are updated, as evidenced by the Company delivering a written proposal to another party that includes such updated terms or the Company's acceptance of a written proposal from another party that includes such updated terms, the Company shall promptly, but no later than two (2) Business Days after such delivery or acceptance of a written proposal including such updated terms, deliver an updated Subsequent Financing Notice to the Holder reflecting any such updated terms.

5.3 If (i) the Subsequent Financing is a private placement, and the Holder desires to participate in such Subsequent Financing, it must provide written notice to the Company by not later than 5:30 p.m. (New York, New York time) on the third (3rd) Business Day following the date of its receipt of the most recent Subsequent Financing Notice (the ***"Participation Deadline"***), stating the amount of the Holder's participation, and that the Holder has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice (such information, the ***"Participation Notice"***). If the Company receives no Participation Notice from the Holder as of the Participation Deadline, the Holder shall be deemed to have notified the Company that it does not elect to participate in such Subsequent Financing on the terms described in such Subsequent Financing Notice, and the Company may effect the Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice without inclusion of the Holder; provided, however, that if at any time a Subsequent Financing Notice is delivered in connection with an update to any material terms contained in a prior Subsequent Financing Notice pursuant to Section 5.2, the Company shall have the opportunity to participate in such Subsequent Financing on such updated terms by complying with the provisions of this Section 5.3. If the Subsequent Financing is an underwritten offering pursuant to an effective registration statement and the Holder desires to participate in such Subsequent Financing, it must provide a written notice to the Company by the Participation Deadline of its desire to participate in the Subsequent Financing and stating that it will be available to the underwriter(s)/placement agent(s) immediately after (and the same day as) the pricing of the Subsequent Financing (and the underwriter(s)/placement agent(s) shall provide at such time to the Holder the price terms of the Subsequent Financing) to provide the Participation Notice to the Company and underwriter(s)/placement agent(s) as promptly as practicable on the day of the pricing of the Subsequent Financing. If the Company and underwriter(s)/placement agent(s) receive no Participation Notice from the Holder on the day of the pricing of the Subsequent Financing (and the underwriter(s)/placement agent(s) have provided to the Holder the price terms of the Subsequent Financing), the Holder shall be deemed to have notified the Company that it does not elect to participate, and the Company may effect the Subsequent Financing on the terms negotiated with the underwriter(s)/placement agent(s) without inclusion of the Holder.

5.4 If the Holder provides a valid Participation Notice to the Company by the time specified in Section 5.5(c), the Company shall include the Holder as a participant in the Subsequent Financing, up to the lesser of (i) the amount that the Holder has specified in the Participation Notice and (ii) the Participation Maximum, as may be limited under Section 5.5(a), on the same terms and conditions applicable to the Person or Persons through or with whom such Subsequent Financing is proposed to be effected.

5.5 For the avoidance of doubt, this Section 5 shall not apply in respect of the offer, sale or issuance of any share of the Common Stock: (i) in connection with any equity incentive plan or employee benefit plan that is outstanding as of the Original Issue Date or subsequently approved by the Board of Directors of the Company; (ii) upon the conversion, exercise or exchange of any Options or other Convertible Securities outstanding as of the Original Issue Date or outstanding following the closing of any Subsequent Financing; (iii) in connection with bona fide strategic transactions, stock acquisitions, mergers, asset acquisitions, joint ventures or similar transactions approved by the Board of Directors of the Company occurring after the Closing Date in each case with non-affiliated third parties and otherwise on an arm's-length basis; provided, that, the purpose of such issuance is not to raise capital; (iv) in connection with any stock split, stock dividend, recapitalization or similar transaction by the Company or (v) any sales or issuances by the Company pursuant to an at-the-market program.

6. Representations and Warranties of the Holder.

6.1 The Holder understands and agrees that the offering and issuance of the Warrant and the Underlying Shares has not been registered under the Securities Act or any applicable state securities laws and is being made in reliance upon federal and state exemptions for transactions not involving a public offering which depend upon, among other things, the bona fide nature of the investment intent and the accuracy of the Holder's representations as expressed herein.

6.2 The Holder is acquiring the Warrant and the Underlying Shares upon the exercise of the Warrant for its own account for investment and not with a view toward distribution in a manner which would violate the Securities Act or any applicable state securities laws.

6.3 The Holder is not party to any agreement providing for or contemplating the distribution of the Warrant or any of the Underlying Shares.

6.4 The Holder, by reason of the business and financial experience of its management, has the capacity to protect its own interests in connection with the transactions contemplated by this Warrant and is capable of evaluating the merits and risks of the investment in the Warrant and the Underlying Shares. The Holder is able to bear the economic risk of an investment in the Warrant and the Underlying Shares and is able to sustain a loss of all of its investment in the Warrant and the Underlying Shares without economic hardship, if such a loss should occur.

6.5 The Holder is an "accredited investor" as that term is defined in Rule 501(a) under the Securities Act. The Holder has not taken any of the actions set forth in, and is not subject to, the disqualification provisions of Rule 506(d)(1) of the Securities Act.

6.6 The Holder has been given access to Company documents, records, and other information, and has had adequate opportunity to ask questions of, and receive answers from, the Company's officers, employees, agents, accountants, and representatives concerning the Company's business, operations, financial condition, assets and liabilities. Holder understands that an investment in the Warrant and the Underlying Shares bears significant risk.

6.7 The Holder understands that the Warrant and the Underlying Shares, will be characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a private placement under Section 4(a)(2) of the Securities Act and that under such laws and applicable regulations the Underlying Shares may be resold without registration under the Securities Act only in certain limited circumstances.

6.8 The Holder acknowledges that the Shares must be held indefinitely unless subsequently registered under the Securities Act and under applicable state securities laws or an exemption from such registration is available. The Holder understands that the Company is under no obligation to register the Shares, except as provided in the Registration Rights Agreement entered into by and between the Company and the Holder on the Original Issue Date. The Holder is aware of the provisions of Rule 144 under the Securities Act, which permit limited resale of securities purchased in a private placement.

6.9 The Holder has had the opportunity to review with the Holder's own tax advisors the federal, state and local tax consequences of this investment, where applicable, and the transactions contemplated by the Warrant and the Underlying Shares. The Holder is relying solely on the Holder's own determination as to tax consequences or the advice of such tax advisors and not on any statements or representations of the Company or any of its agents.

7. Other Provisions Relating to Rights of the Holders of the Warrant.

7.1 Lost, Stolen, Mutilated, or Destroyed Warrants. If this Warrant is lost, stolen, mutilated, or destroyed, the Company may on such terms as to indemnity or otherwise as they may in their reasonable discretion impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination, tenor, and date as the Warrant so lost, stolen, mutilated, or destroyed. In the case of a mutilated Warrant, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation. Any such new Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Warrant shall be at any time enforceable by anyone.

7.2 Reservation of Underlying Shares. The Company covenants that, during the period any Underlying Shares are or may become issuable upon exercise of the Warrant, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of all Underlying Shares that are or may become issuable upon exercise of the Warrant. The Company will take all such action as may be necessary to ensure that such Underlying Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Underlying Shares which may become issuable upon the exercise of this Warrant will, upon such exercise and payment for such Underlying Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

7.3 Registration of the Underlying Shares. The Company shall file and maintain with the Commission a registration statement for the registration, under the Securities Act, of the Underlying Shares issuable upon exercise of the Warrant at such time and in the manner as provided for in the Registration Rights Agreement.

8. Miscellaneous Provisions.

8.1 Payment of Taxes. The Company shall from time to time promptly pay all taxes and charges that may be imposed upon the Company (or its transfer agent) in respect of the issuance or delivery of Underlying Shares upon the exercise of the Warrant, but the Company shall not be obligated to pay any transfer taxes in respect of the Warrant or such Underlying Shares.

8.2 Successors. All the covenants and provisions of this Warrant by or for the benefit of a party shall bind and inure to the benefit of its successors and assigns.

8.3 Notices. Any notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given: (i) when delivered, if delivered in person; (ii) on the fifth (5th) business day after dispatch by registered or certified mail; (iii) on the next business day if transmitted by national overnight courier; or (iv) the time of transmission, if such notice or communication is delivered via confirmed email prior to 5:30 P.M. New York City time, on a Trading Day or the Next Trading Date after the date of transmission, if such notice or communication is delivered via confirmed email on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, in each case as follows (or at such other address for a party as shall be specified by like notice):

If to the Company:

Nuwellis, Inc.
Attention: CEO
12988 Valley View Road
Eden Prairie, Minnesota 55344
Email: nestor.jaramillo@nuwellis.com

With copies to (which shall not constitute notice), to:

Honigman LLP
Attention: Phillip D. Torrence
650 Trade Centre Way, Suite 200
Kalamazoo, Michigan 49002-0402
ptorrence@honigman.com

If to the Holder:

DaVita, Inc.

Attn: Steve Phillips
2000 16th Street
Denver, Colorado 80202
With copies (which shall not constitute notice), to:

Freshfields Bruckhaus Deringer US LLP
Attention: Scott Blumenkranz
855 Main Street
Redwood City, CA 94063
Email: scott.blumenkranz@freshfields.com

8.4 All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any disput hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is imporper or is an inconveient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrent, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR ACTION ARISING OUT OF THIS WARRANT IS HEREBY WAIVED.

8.5 Persons Having Rights under this Warrant. Nothing in this Warrant shall be construed to confer upon, or give to, any person, corporation or other entity other than the parties hereto and the Registered Holder of the Warrant any right, remedy, or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Warrant shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

8.6 Counterparts. This Warrant may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

8.7 Effect of Headings. The section headings herein are for convenience only and are not part of this Warrant and shall not affect the interpretation thereof.

8.8 Amendments. All modifications or amendments shall require the written consent of the Company and the Holder. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. Waiver by the Holder of a breach of any provision of this Warrant will not operate as a waiver of any other or subsequent breach.

8.9 Severability. This Warrant shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Warrant or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Warrant a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Exhibit A - Vesting Terms

Exhibit B - Notice of Exercise

Exhibit C - Legend

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Warrant to be duly executed as of the date first above written.

NUWELLIS, INC.

By:	/s/ Nestor Jaramillo, Jr.
Name:	Nestor Jaramillo, Jr.
Title:	Chief Executive Officer and President

DAVITA INC.

By:	/s/ Ray Follett
Name:	Ray Follett
Title:	Group Vice President

EXHIBIT A

Vesting Terms

Underlying Share Tranches	***Number of Underlying Shares (subject to adjustment as set forth in Section 4 of the Warrant)[2]***	***Vesting Schedule***
"First Tranche Milestone Shares"	322,270	The date of the Company's receipt of the Ultrafiltration Services Approval (as defined in the Supply Agreement) (the "***First Tranche Milestone Date***"); provided, however, that if the First Tranche Milestone Date does not occur within the timeframe specified in the Supply Agreement, the Warrant shall be cancelled.
"Second Tranche Milestone Shares"	322,270	The date of attainment by the Company of net revenue of [**] (the "***Second Tranche Net Revenue Target***") in sales to DaVita under the Supply and Collaboration Agreement within twelve (12) months of the Ultrafiltration Services Approval (the "***Second Tranche Milestone Date***").
"Third Tranche Milestone Shares"	322,270	The date of attainment by the Company of net revenue of [**] (the "***Third Tranche Net Revenue Target***") in sales to DaVita under the Supply and Collaboration Agreement within twenty-four (24) months of the Ultrafiltration Services Approval (the "***Third Tranche Milestone Date***").
"Fourth Tranche Milestone Shares"	322,271	The date of attainment by the Company of net revenue of [**] (the "***Fourth Tranche Net Revenue Target***") in sales to DaVita under the Supply and Collaboration Agreement within thirty-six (36) months of the Ultrafiltration Services Approval (the "***Fourth Tranche Milestone Date***").

[2] Each tranche to reflect 25% of the total shares

EXHIBIT B

Form of Notice of Exercise

(To Be Executed Upon Exercise of Warrant)

Ladies and Gentlemen:

(1) The undersigned is the Holder of Warrant No. [__] (the "***Warrant***") issued by Nuwellis, Inc., a Delaware corporation (the "***Company***"). Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Warrant.

(2) The undersigned hereby exercises its right to purchase _____ Underlying Shares pursuant to the Warrant.

(3) The Holder intends to pay the sum of $_____ in immediately available funds to the Company in accordance with the terms of the Warrant.

(4) Pursuant to this Notice of Exercise, the Company shall deliver to the Holder Underlying Shares determined in accordance with the terms of the Warrant.

(5) The undersigned hereby represents and warrants as follows:

(a) The undersigned is acquiring such shares of Common Stock for its own account for investment and not for resale or with a view to distribution thereof in violation of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "***Securities Act***"); and

(b) the undersigned is an accredited investor as defined in Rule 501 of Regulation D promulgated under the Securities Act and was not organized for the purpose of acquiring the Warrant or such shares of Common Stock.

(Signature page follows)

Dated: _____

Name of Holder: _____

By: _____

Name: _____

Title: _____

Address: _____

_____

EXHIBIT C

LEGEND

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

SECURITIES EVIDENCED HEREBY AND SHARES OF COMPANY COMMON STOCK ISSUED UPON EXERCISE OF SUCH SECURITIES SHALL BE ENTITLED TO REGISTRATION RIGHTS UNDER A REGISTRATION RIGHTS AGREEMENT TO BE EXECUTED BY THE COMPANY.

Certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) would likely cause competitive harm to the Company, if publicly disclosed. Double asterisks denote omissions.

SUPPLY AND COLLABORATION AGREEMENT

This Supply and Collaboration Agreement (the "Agreement") is effective as of June 19, 2023 (the "Effective Date"), by and between DaVita Inc., a Delaware corporation, for the benefit of DaVita and its Affiliates (collectively referred to as "DaVita"), and Nuwellis, Inc., a Delaware corporation ("Nuwellis"). DaVita and Nuwellis may be referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Nuwellis and DaVita desire to structure a long-term collaboration under which DaVita will launch a new service line to use the Products to treat non-pediatric congestive heart failure and related conditions in inpatient and outpatient settings (the "Business") and Nuwellis will supply the Products and provide related support all as more fully described herein;

WHEREAS, DaVita intends to conduct a Pilot using the Products and services available from Nuwellis and, if DaVita elects to move to scale, to procure such Products and services from Nuwellis on an ongoing basis throughout the Term;

WHEREAS, the parties acknowledge that in connection with launching the Business, DaVita will invest substantial time, capital, and resources to create a new services offering and the issuance of the Warrant and the Exclusivity Covenants reflect the value created for Nuwellis through DaVita's creation of the Business; and

WHEREAS, Nuwellis will undertake substantial efforts to ensure DaVita's employees and DaVita Facilities are trained on the Product, console troubleshooting, therapy administration and the clinical advantages of ultrafiltration for those patients who are non-responsive to diuretics.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants, agreements, representations, and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DaVita and Nuwellis agree to the foregoing and as follows:

1.0 OPERATIONAL TERMS

1.1 Scope & Eligibility.

(a) This Agreement establishes the terms and conditions upon which, (i) DaVita and DaVita Facilities may purchase or rent Products from Nuwellis to provide Ultrafiltration Services to patients at Pilot Facility(ies) during the Pilot; (ii) DaVita and DaVita Facilities may, subject to DaVita's Ultrafiltration Services Approval, purchase or rent Products from Nuwellis Post-Pilot for purposes of providing Ultrafiltration Services to DaVita Facilities, and (iii) Nuwellis will provide various support services to DaVita and DaVita Facilities as described herein.

(b) During the Pilot Term, DaVita and DaVita Facilities may submit Purchase Orders for Products at the Purchase Price or Rental Price, as applicable, and upon the terms and conditions set forth in this Agreement.

(c) Post-Pilot, DaVita and DaVita Facilities may submit Purchase Orders to buy or rent Products at the Purchase Price or Rental Rate, as the case may be, and upon the terms and conditions set forth in this Agreement. All DaVita Facilities shall be considered third party beneficiaries under this Agreement.

1.2 Exclusivity & Sales Support Services. In addition to Section 1.1, this Agreement establishes the terms and conditions upon which DaVita and Nuwellis are entering into an exclusive relationship regarding the sale and provision of certain Ultrafiltration Services and Products to Hospitals as well as the Parties' obligations with respect to the sales and marketing of such Ultrafiltration Services and Products, as more fully described in and subject to the terms and conditions of Exhibit A hereto.

1.3 Pilot & Post-Pilot Operational Terms.

1.3.1 Pilot. During the Pilot Term, DaVita will conduct the Pilots at Pilot Facility(ies) in accordance with a plan and timeline to be determined by DaVita in its sole and absolute discretion. If, prior to the end of the Pilot Term, DaVita determines, in its sole and absolute discretion, to scale the Ultrafiltration Services to other DaVita Facilities or Hospitals, DaVita may submit the Ultrafiltration Services Approval to Nuwellis to initiate the Initial Term of this Agreement and commence the Ultrafiltration Services Rollout.

1.3.2 Ultrafiltration Services Rollout. Subject to DaVita's Ultrafiltration Services Approval pursuant to Section 1.3.1 above, DaVita may commence the Ultrafiltration Services Rollout in accordance with a plan and timeline to be determined by DaVita in its sole and absolute discretion. Notwithstanding the foregoing, DaVita shall use commercially reasonable efforts to inform Nuwellis of the Ultrafiltration Services Rollout timeline for Nuwellis's planning purposes only. For 60 days following DaVita's delivery of the Ultrafiltration Services Approval to Nuwellis, DaVita and Nuwellis will coordinate to finalize launch plans and go to market strategies, and otherwise address any relevant learnings from the Pilot Term; provided, however that, for the avoidance of doubt, such coordination shall not in any way modify, reduce or alter Nuwellis's Supply Commitment under this Agreement.

1.4 Warrant. In consideration for the transactions contemplated by this Agreement, including the investments made by DaVita, concurrently with the execution and delivery of this Agreement, (a) Nuwellis will issue to DaVita the warrant attached hereto as Exhibit D and (b) DaVita and Nuwellis will execute and deliver the registration rights agreement attached hereto as Exhibit E.

2.0 TERM & TERMINATION

2.1 Term.

(a) This Agreement shall commence on the Effective Date and shall remain in full force and effective through the earlier to occur of (i) the treatment of not less than 150 patients or (ii) December 31, 2023 ("Pilot Term"); provided however, that DaVita may extend the Pilot Term until May 31, 2024 upon written notice to Nuwellis.

(b) The Term shall be automatically extended through December 31, 2028 ("Initial Term") if, at any point during the Pilot Term, DaVita provides Nuwellis written notice of the Ultrafiltration Services Approval.

(c) At any time prior to the expiration of the Initial Term, DaVita shall have the option to extend the Term of this Agreement an additional five (5) years by providing written notice of renewal to Nuwellis at least thirty (30) days' prior to expiration of the Initial Term ("Renewal Term"). Upon expiration this Agreement shall then automatically terminate and may only be renewed upon mutual written agreement of the Parties

2.2 Termination. This Agreement may be terminated as follows:

(a) Subject to the provision of Section 12.4 below, by DaVita, immediately upon written notice to Nuwellis, (i) following a Change in Control of Nuwellis, (b) following a Failure to Supply Event that lasts sixty (60) days or longer, or (c) if Nuwellis breaches any of its covenants, agreements, or obligations set forth in Section 7.2.2;

(b) By either Party, subject to thirty (30) days' prior written notice, if the other Party materially breaches this Agreement and does not cure such breach within thirty (30) days of receipt of notice describing the breach; or

(c) By either Party, effective immediately upon written notice to the other Party, if such Party: (i) becomes the subject of any bankruptcy proceedings, receivership or other insolvency proceedings; (ii) makes an assignment or other arrangement for the benefit of its creditors; (iii) fails to pay its debts as they become due or admits its inability to do so; or (iv) otherwise ceases to do business.

2.3 Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, neither Party shall have any further obligation to the other Party hereunder, except (a) for those liabilities or obligations which, at the time of expiration or termination, have already accrued or which may accrue prior to such date, or (b) as otherwise provided in this Agreement.

2.4 Product Returns after Pilot Term. Following the end of the Pilot Term or the termination of this Agreement, whichever is later, Nuwellis shall collect, and DaVita shall give Nuwellis access to collect, all rented Products and unused Products that DaVita has not elected to purchase in accordance with Section 3.2.

2.5 Transition Assistance. Upon DaVita's request, the Term of this Agreement shall be extended for a period of up to one hundred eighty (180) days following the expiration or termination date ("Transition Period") to assist DaVita in transitioning from purchasing under this Agreement. During the Transition Period, the Supply Commitments shall remain in full force and effect, and Nuwellis shall continue to fulfill all Purchase Orders submitted hereunder in accordance with the terms herein and provide transition assistance reasonably requested by DaVita to allow DaVita's successor supplier to continue without material interruption or adverse effect to DaVita and to facilitate the orderly transfer of supplies to the appropriate parties and in compliance with applicable Laws. Notwithstanding the foregoing, no Forecasts shall be applicable during the Transition Period.

3.0 FINANCIAL TERMS

3.1 Pricing. The Rental Prices and Purchase Prices applicable to the rental and/or purchase of each Product are set forth in Exhibit B. The Rental Price and Purchase Price shall be in addition to all standard shipping, handling, freight, and service charges. During the Term, Nuwellis may change the Rental Price or Purchase Price (including any applicable Discounts) not more than once every two (2) years for any Product, without the prior written consent of DaVita, provided such price increases may not exceed [**]% per annum and which may only be evidenced by a written amendment to this Agreement signed by both Parties.

3.2 Purchase of Rented Products. Upon the later of expiration of the Pilot Term or termination of this Agreement, DaVita shall have the option to purchase any rented Products from Nuwellis at an amount equal to the Purchase Price of the Product less the Rental Price paid for the Product through the date of purchase.

3.3 Rebates. Other than during the Pilot Terms when DaVita is ineligible to earn any rebates, DaVita shall be eligible to receive the Rebates described in Exhibit C, subject to the terms and conditions therein.

3.4 Market Competitiveness Guarantee.

(a) Nuwellis represents and warrants that (i) each Purchase Price and Rental Price and the non-price terms set forth in this Agreement (including any warranties and customer support) are and, during the Term shall remain, market competitive, and (ii) other than with respect to product numbers 114153 and 115463 set forth on Exhibit B, each Purchase Price and Rental Price is and will be during the Term equal to or lower than any purchase price or rental rate agreed upon by Nuwellis and any other purchaser that purchased and/or rented machines and consumables in volumes during the prior year less than or equal to the volume of those rented and/or purchased by DaVita.

(b) If, at any time during the Term, Nuwellis fails to comply with this Section 3.4, Nuwellis shall immediately notify DaVita in writing of such non-compliance and within thirty (30) days of notice make all adjustments necessary to become compliant with this Section 3.4.

(c) If any Purchase Price or Rental Price set forth in Exhibit B does not comply with this Section 3.4, (i) Exhibit B shall be amended to provide the more favorable Purchase Price or Rental Price (as applicable) (the "MFN Price") to DaVita, and (ii) Nuwellis shall, within thirty (30) days of providing notice to DaVita of the MFN Price, reimburse DaVita for an amount equal to the difference between the Purchase Price or Rental Price (as applicable) paid by DaVita and the MFN Price, retroactive to the date upon which any other entity received the MFN Price.

(d) The Parties shall work together in good faith to resolve any dispute regarding this Section 3.4; provided that should such dispute resolution fail, Nuwellis's failure to comply with this Section 3.4 shall be deemed a material breach of this Agreement.

3.5 Invoicing. Nuwellis shall invoice DaVita for all Product purchased or rented under this Agreement pursuant to DaVita's then-current invoicing requirements, one hundred percent (100%) at the end of each calendar month. If an invoice does not match the Purchase Order or meet DaVita's then-current invoice requirements, then DaVita shall have the right to reject the invoice and request resubmission by Nuwellis, and the payment term set forth in Section 3.6 shall be tolled until a correct invoice has been received by DaVita. Notwithstanding the foregoing, no invoice will be paid or payable by DaVita if (a) Nuwellis does not receive a Purchase Order from DaVita prior to providing the Products, or (b) Nuwellis submits the invoice to DaVita more than sixty (60) days following the date the Products are delivered.

3.6 Payment Terms. DaVita shall pay all undisputed invoices within thirty (30) days from the date of receipt of Nuwellis's invoice by DaVita's Accounts Payable Department. DaVita shall receive an additional two percent (2%) off the invoiced amount if full payment is made to Nuwellis within ten (10) days following DaVita's receipt of invoice, with the availability of such discount reflected on each invoice issued by Nuwellis. If DaVita disputes any invoiced charges or costs, it shall notify Nuwellis and shall be entitled to withhold the disputed invoice from payments otherwise due until resolution of the dispute. The making of any payment or payments by DaVita, or the receipt thereof by Nuwellis, shall not imply acceptance by DaVita of the Product or any component thereof.

3.7 Overpayments. If Nuwellis charges DaVita a price higher than that stated in an applicable Purchase Order, Nuwellis shall promptly issue DaVita a refund or credit in the amount of such overcharge/overpayment following discovery by Nuwellis, or upon receipt of notice thereof from DaVita, but in no event later than thirty (30) days following any such notice. If Nuwellis charges DaVita a price lower than that stated in an applicable Purchase Order, DaVita shall have no obligation to pay the amount of such undercharge to Nuwellis, nor shall Nuwellis have the right to set-off the undercharge against any amounts owed or due to DaVita unless Nuwellis submits a corrected invoice for such undercharged amounts within sixty (60) days after the month in which the Products were delivered.

3.8 Taxes.

3.8.1 Nuwellis Taxes. Nuwellis shall be registered in all taxing jurisdictions where, as a seller of Products hereunder, it is legally required to register. Nuwellis shall be solely liable for any taxes of Nuwellis that Nuwellis is legally obligated to pay (including, without limitation, net income or gross receipts, franchise taxes, and property taxes) which are incurred or arise in connection with this Agreement or the Products sold hereunder. All such taxes shall be the financial responsibility of Nuwellis and shall not be passed on to DaVita.

3.8.2 Sales, Use or Value Added Taxes. DaVita shall pay to Nuwellis, and Nuwellis shall pay to the appropriate taxing jurisdiction, any sales, use or value added taxes that are owed by DaVita solely as a result of entering into this Agreement and which are legally required to be collected from DaVita by Nuwellis under applicable Laws. DaVita may provide to Nuwellis a valid exemption certificate in which case Nuwellis shall not collect any taxes covered by such certificate. Each Nuwellis invoice to DaVita shall clearly and separately state the amount of all applicable taxes. If multiple items are listed on Nuwellis's invoice, the tax rate and tax amount must be indicated for each item. Nuwellis shall promptly refund to DaVita, in cash, any over-charges of taxes collected by Nuwellis from DaVita. Nuwellis shall pay any penalties or interest assessed by any taxing authority as a result of Nuwellis's failure to comply with this Section 3.7.2.

3.8.3 Withholding Taxes. If taxes are required to be withheld on any amounts otherwise to be paid by DaVita to Nuwellis, DaVita will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. DaVita shall secure and deliver to Nuwellis an official receipt for any taxes withheld. DaVita and Nuwellis shall use reasonable efforts to minimize such taxes to the extent permissible under applicable Law.

4.0 PRODUCT TERMS

4.1 Products Generally. Nuwellis shall sell, rent, supply, transfer and deliver to DaVita the Products at the Purchase Price or Rental Price (as applicable) and in such quantities as DaVita may order from time-to-time, subject to and in accordance with the terms and conditions of this Agreement. Except as set forth in Section 4.2, or as may be required by applicable Law, no Product may be removed from this Agreement without DaVita's prior written consent, and such consent is not to be unreasonably withheld.

4.2 Product Discontinuation. Notwithstanding anything else in this Agreement to the contrary, Nuwellis may not for any reason discontinue the sale or rental of any Products, or otherwise modify any Products without DaVita's prior written consent except with respect to (i) New Product launches that replace existing Products and are no lower quality than the existing Products and have the same or lower cost as existing Products; (ii) software upgrades; (iii) iterative product development enhancements; or (iv) as otherwise required by applicable law; provided that any such New Products and/or upgrades and enhancements do not (1) negatively impact DaVita's ability to use, sell, or provide services using the Products, or (2) increase the cost to DaVita to provide services, except as permitted by Section 3.1. If product is discontinued due to termination of FDA authorization or a recall due to product defect, Failure to Supply terms of this agreement would apply.

4.3 New Products. If, during the Term, Nuwellis makes available any new products for the treatment of congestive heart failure that offer technological advancements or improved clinical outcomes, patient care, or streamlined work processes, as compared to existing Products ("New Products"), Nuwellis shall notify DaVita at least sixty (60) days prior to the release of such New Product(s) and, within such sixty (60) day period, (a) provide DaVita with the first opportunity to purchase or rent the New Product(s) at Discounts comparable to those applicable to the Products under this Agreement (each such notice, a "ROFR Notice"), (b) provide any information about the New Product(s) as reasonably requested by DaVita, and (c) meet with DaVita and its clinical committees to discuss the clinical, technological, and operational benefits of the New Product(s). Each ROFR Notice shall include terms sufficiently detailed to enable DaVita to make an informed decision as to whether to proceed with a right of first refusal with respect to the purchase of the New Products. DaVita shall, during the sixty (60) day period beginning on the date DaVita receives such ROFR Notice, be exclusively entitled to exercise a right of first refusal to purchase such New Products for DaVita customer categories set forth on Exhibit G, after which time Nuwellis shall be free to launch any such New Product in the marketplace without limitation.

4.4 Shelf-Life. All consumable Products purchased by DaVita pursuant to this Agreement shall have at least twelve (12) months good dating, unless otherwise mutually agreed to by the Parties in writing.

4.5 Product Training; Customer Service. Nuwellis shall, at no cost to DaVita, provide: (a) qualified personnel to train DaVita employees on all aspects of the Products, and (b) all relevant written documentation regularly provided by Nuwellis for each Product, including, but not limited to, written materials, products manuals, user guides, videos, and other electronic media ("Training Materials"). Product Training contemplated by this Section 4.6 shall be at no cost to DaVita up to four (4) times per year, and shall thereafter be invoiced at a rate to be mutually upon by the parties giving effect to travel costs and expenses and whether such training was in-person or remote. Such support shall be performed in a timely, professional, competent, good and workmanlike manner in accordance with industry standards and in compliance in all material respects with applicable laws. Nuwellis hereby grants to DaVita a non-exclusive, irrevocable, fully transferable, fully paid up, royalty-free, sublicensable right and license to use, import, copy, reproduce, display, transmit, translate, alter, modify, create derivative works of and otherwise distribute the Training Materials, in any and all formats and media whether now or hereafter known or devised and by any and all technologies and means of delivery whether now or hereafter known or devised for purposes of educating and training DaVita employees. DaVita shall have the right to upload the Training Materials to DaVita or third party platforms and software applications, including, but not limited to, DaVita's instance of a third party learning management system.

4.6 Product Customer Service. Nuwellis shall provide customer service support staff for receipt of telephone calls, e-mails and facsimiles from DaVita for the purpose of resolving issues related to the Products and all transactions under this Agreement. Nuwellis's customer service representatives shall be available from 8:00 am to 5:00 pm, Central Time .

4.7 Nuwellis Support Services. During the Term, Nuwellis shall provide the support services described in Exhibit A.

4.8 Level of Service. DaVita will receive all services and support provided by Nuwellis hereunder at levels of service no less favorable than those provided to any other Product customers. If, during the Term, Nuwellis offers to such other Product customers any new services or any substantially different software for the Products, Nuwellis shall notify DaVita of such new services or substantially different software. If DaVita desires to receive such services or substantially different software, Nuwellis shall provide DaVita such new services or substantially different software at levels of service and software no less favorable than those provided to any other Product customers.

5.0 ORDERING & DELIVERY TERMS

5.1 Purchase Orders. DaVita may submit Purchase Orders for Products to Nuwellis in such quantities as DaVita may determine in its sole discretion from time-to-time. The terms and conditions of this Agreement shall apply to each such Purchase Order by DaVita. No minimum quantity or dollar amount shall apply to any Purchase Order although DaVita agrees to abide by any then current packaging unit of measurement requirements. DaVita's Purchase Orders for Products to Nuwellis shall be deemed accepted by Nuwellis unless Nuwellis notifies DaVita it is unable to fulfill the Purchase Order within forty-eight (48) hours of Purchase Order submission by DaVita. Notwithstanding the foregoing, any Purchase Orders from DaVita in any amount greater than [**]% of the Forecast for such quarter may be rejected by Nuwellis and will not be deemed to be a breach of this Agreement nor will it be deemed a Failure to Supply Event unless such order is otherwise accepted by Nuwellis and not fulfilled.

5.2 Purchase Order Cancellation. DaVita may cancel any Purchase Order submitted to Nuwellis pursuant to this Agreement, in whole or in part, without liability, if: (a) Products have not been shipped as of the date of Nuwellis's receipt of notice of cancellation (unless Products are custom orders); (b) Products (or the possession and use thereof) infringe, misappropriate or are alleged to infringe or misappropriate any Intellectual Property right; (c) Products (or the possession and use thereof) fail to comply with the terms of this Agreement or with any applicable Law; (d) Products are subject to Recall; or (e) Nuwellis is in breach of the warranty of non-exclusion, as set forth in Section 7.2.2. To cancel, DaVita shall give notice to Nuwellis, and Nuwellis shall immediately terminate deliveries under the applicable Purchase Order and refund any payments made by DaVita for such Products.

5.3 Delivery of Product. Unless otherwise set forth in a Purchase Order, all Product deliveries shall be made to the ordering DaVita Facility within fifteen (15) days of receipt of a Purchase Order by Nuwellis. All Product shipments to DaVita Facilities shall be F.O.B. Destination. Nuwellis assumes all responsibility for proper packaging of Products for safe shipment to DaVita in accordance with the packing and shipping regulations of the transportation supplier and, if applicable, the packaging, marking, labeling and shipping paper requirements of the United States Department of Transportation's Hazardous Material Regulations. All shipping, transportation and related charges are the sole responsibility of, and shall be prepaid by DaVita. Nuwellis shall bear the full risk of loss due to total or partial destruction of the Product prior to delivery to DaVita. For Products purchased by DaVita, title and risk of loss to the Product shall pass to DaVita upon delivery to DaVita's designated delivery location. For Products rented by DaVita, title and risk of loss to the Product shall remain with Nuwellis.

5.4 Delivery Service Levels. Nuwellis' service levels for DaVita shall be at least as high as the service levels provided by Nuwellis to any third party. Nuwellis shall provide accurate and on-time deliveries of orders submitted hereunder for each Product placed in accordance with reasonable instructions that may be included in the Purchase Order for each such Product.

5.5 Inspection & Acceptance. All Products shall be subject to inspection and approval following receipt by DaVita. Products may be rejected by DaVita and returned to Nuwellis pursuant to Section 5.6 below.

5.6 Product Returns. DaVita shall have the right to return any Products purchased pursuant to this Agreement to Nuwellis for a full refund of the Purchase Price or Rental Price paid by DaVita in the event any such Products (a) are damaged, defective or expired or do not have the requisite twelve (12) months good dating upon delivery to the designated DaVita Facility; (b) are shipped in error or otherwise fail to comply with the applicable Purchase Order; (c) fail to comply with any warranties set forth in this Agreement or are otherwise adulterated or misbranded under applicable Law; (d) are subject to Recall as set forth in Section 8.8; or (e) are otherwise eligible for return as set forth in this Agreement. All Product returns shall be sent to Nuwellis at Nuwellis's sole cost and expense, F.O.B. Origin, Freight Collect except for returns resulting from any clerical error by DaVita. Nuwellis shall issue a credit or refund, as elected by DaVita in its sole discretion, to DaVita for the Purchase Price or Rental Price of the returned Products within thirty (30) days of receipt of all such returns.

6.0 PURCHASE & SUPPLY COMMITMENTS; PRODUCT AVAILABILITY

6.1 Forecasts. DaVita shall provide to Nuwellis: (a) within at least thirty (30) days, a non-binding forecast of the minimum amount of Product DaVita anticipates purchasing for each Pilot Facility for use during the Pilot; and (b) commencing Post-Pilot, subject to the Ultrafiltration Services Approval, at least ninety (90) days prior to the start of each calendar quarter during the Term, a non-binding forecast of the minimum amount of Product DaVita anticipates purchasing during the following calendar quarter pursuant to this Agreement (each a "Forecast" and, collectively, the "Forecasts"). Notwithstanding the foregoing, the first Post-Pilot Forecast shall not be due to Nuwellis until DaVita provides the Ultrafiltration Services Approval or sixty (60) days prior to the end of the Pilot Term, whichever is later.

6.2 Product Supply Commitments.

6.2.1 Generally. Nuwellis acknowledges and agrees that DaVita has selected Nuwellis as its supplier of the Products based in significant part on Nuwellis's manufacturing and distribution capacities and Nuwellis's stated ability to satisfy DaVita's continuous and critical demand for each of the Products throughout the Term. In the event of a Claim, Dispute, or other disagreement between the Parties relating to this Agreement, Nuwellis agrees and covenants that during the pendency and until resolution of such Claim, Dispute or disagreement, it shall continue to supply each Product to DaVita in accordance with this Agreement, including, without limitation the Supply Commitment.

6.2.2 Supply Commitment. Nuwellis covenants and agrees that: (a) during the Pilot Term, Nuwellis shall supply all quantities of Product as may be required by DaVita to conduct the Pilot (as determined by DaVita in its sole and absolute discretion) including all quantities submitted in the Pilot Forecast and Purchase Orders to Nuwellis; and (b) Post-Pilot, Nuwellis shall make available for purchase by DaVita each calendar quarter during the Term Product in amounts equal to at least [**] of the applicable Forecast (each a "Supply Commitment" and, collectively the "Supply Commitments"). Notwithstanding the foregoing, any Purchase Orders from DaVita in any amount greater than [**]% of the Forecast for such quarter may be rejected by Nuwellis and will not be deemed to be a breach of this Agreement nor will it be deemed a Failure to Supply Event unless such order is otherwise accepted by Nuwellis and not fulfilled.

6.3 Failure to Supply Events.

6.3.1 Notification and Allocation of Products.

(a) Upon the occurrence of a Failure to Supply Event, Nuwellis covenants and agrees that it shall: (i) immediately (and within no more than two (2) business days) notify DaVita in writing of the Failure to Supply Event, including a good faith estimate of the continuing effect of such event or cause; (ii) give DaVita the highest priority for supply of the affected Products and allocate the remaining quantities of the affected Products to DaVita, in a fair and proportional basis, in at least an amount equal to (A) during the first six (6) months of the Term, the quantities of Products included in DaVita's Forecast, and (B) following the initial six (6) months of the Term, the percentage of affected Products purchased by DaVita during the six (6) month period immediately preceding the Failure to Supply Event as compared to the purchases of such Products by all other Nuwellis purchasers during the same period; (iii) not discriminate against DaVita in its allocation of the available quantities of any such Products affected by such Failure to Supply Event by making its allocation decisions, in whole or in part, on the basis of the prices, Discounts, or other financial terms offered to DaVita pursuant to the terms and conditions of this Agreement; and (iv) continue to perform its obligations hereunder that are not affected by such Failure to Supply Event, including, but not limited to, lost profits from customers to whom DaVita or its Affiliates provide Ultrafiltration Services.

(b) Following Nuwellis's written notice of a Failure to Supply Event, Nuwellis shall keep DaVita informed in writing on a bi-weekly basis regarding the likely duration and extent of the Failure to Supply Event, and shall take all reasonable steps necessary to relieve the effect of such causes as rapidly as possible. The provisions of this Section 6.3.1 do not relieve Nuwellis of its obligations under this Agreement, and do not waive or limit DaVita's other available rights and remedies.

6.3.2 DaVita Remedies. In addition to any other rights or remedies available to DaVita, the following remedies shall apply upon the occurrence of a Failure to Supply Event:

(a) Not less than ninety (90) days following its receipt of written notice of a Failure to Supply Event, DaVita shall thereafter have the right, in its sole discretion, to (i) suspend performance of the Agreement, or (i) terminate this Agreement in accordance with Section 2.2(a);

(b) Nuwellis shall provide DaVita with a credit equal to [**]% of the Purchase Price or Rental Price for first month [**]% of the of the Purchase Price or Rental Price after 60 days, and [**]% of the Purchase Price or Rental Price after 90 days for the Products subject to the applicable Purchase Order for each 30 day period that passes (but in no event to exceed four (4) 30 day periods following the original delivery date set forth in such Purchase Order (each a "Delay Credit"). Each Delay Credit due to DaVita shall be promptly paid to DaVita or credited to DaVita's account against other amounts due to Nuwellis, at DaVita's sole discretion;

(c) Nuwellis' Supply Commitment will not be reduced as a result of a Failure to Supply Event;

(d) The Forecasts shall be suspended and pro-rated for the period affected by such Failure to Supply Event;

(e) DaVita shall continue to earn Rebates on Product purchases at the same level as that which DaVita had reached immediately prior to the Failure to Supply Event, which shall continue for the duration of the applicable Rebate period;

(f) DaVita shall continue to maintain exclusivity pursuant to Section 2(a) of Exhibit A of this Agreement, and the requirements set forth in Section 2(b) of Exhibit A shall be suspended and pro-rated for the period affected by such Failure to Supply Event; and

Nuwellis shall compensate DaVita for: (i) the difference between the net price that DaVita pays for any alternative product that DaVita purchases or rents, as applicable, and the Purchase Price or Rental Price that DaVita would have paid if Nuwellis had been able to supply the Product affected by such Failure to Supply Event; and (ii) all additional reasonable shipping, handling, freight or service charges incurred by DaVita in acquiring such alternative product as a result of such Failure to Supply Event.

7.0 REPRESENTATIONS AND WARRANTIES

7.1 DaVita Representations and Warranties.

7.1.1 General. DaVita represents and warrants to Nuwellis that (a) it will comply with applicable Laws with respect to the performance of its duties and obligations under this Agreement; (b) it now has and will maintain in full force during the Term of this Agreement all federal and state licenses or approvals required by DaVita to fulfill its obligations under this Agreement; (c) it has, and shall have during the Term, the power and authority to enter into this Agreement; and (d) entering into and fully performing its obligations under this Agreement does not and will not violate any existing agreements or obligations.

7.1.2 Warranty of Non-Exclusion. DaVita represents and warrants that it is not currently (a) named on any of the following lists: (i) HHS/OIG List of Excluded Individuals/Entities, (ii) GSA List of Parties Excluded from Federal Programs, or (iii) OFAC "SDN and Blocked Individuals;" or (b) otherwise aware of any circumstances which would result in DaVita being excluded from participation in any Federal health care program, as defined under 42 U.S.C. §1320a-7b(f).

7.2 Nuwellis Representations and Warranties.

7.2.1 General. Nuwellis represents and warrants to DaVita that (a) it will comply with applicable Laws with respect to the performance of its duties and obligations under this Agreement, including, without limitation, the manufacturing, handling, storage, transportation, distribution, promotion and labeling of Products; (b) it will use commercially reasonable efforts to maintain the manufacturing capacity, resources and personnel necessary to perform its obligations under the Agreement; (c) it has all material rights, regulatory licenses, permits and regulatory consents necessary to manufacture, sell, rent and distribute the Product including all regulatory approvals, any and all export or import licenses or clearances relating to any materials used to produce the Product and all applicable state and federal licenses necessary to lawfully ship the Product as set forth in this Agreement; (d) Nuwellis has not received any FDA Form 483s, notices of adverse findings, warning letters, untitled letters, notice of violation letters, consent decrees, requests for information or other negative correspondence or notice from FDA or any other Governmental Authority related to the Products; (e) it has, and shall have during the Term, the power and authority to enter into this Agreement; and (f) entering into and fully performing its obligations under this Agreement does not and will not violate any existing agreements or obligations.

7.2.2 Warranty of Non-Exclusion. Nuwellis represents and warrants that neither it nor any of its Affiliates or personnel (a) is currently named, or excluded, on, or from, any of the following lists: (i) HHS/OIG List of Excluded Individuals/Entities; (ii) The GSA's System for Award Management, which was formerly known as the GSA List of Parties Excluded from Federal Programs; and (iii) OFAC "SDN and Blocked Individuals"; (b) is currently under investigation or otherwise aware of any circumstances which would result in Nuwellis being excluded, debarred, or otherwise made ineligible from participation in any Federal health care program, as defined under 42 U.S.C. §1320a-7b(f); (c) has ever been either convicted of a criminal offense, assessed civil monetary penalties pursuant to the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, 42 U.S.C. § 1320a-7(b)(1)-(3) or excluded from the Medicare program or any state health care program; or (d) is subject to an action or investigation that could lead to the conviction of a criminal offense, the assessment of civil monetary penalties, or exclusion from the Medicare program or any state health care program. Nuwellis will promptly notify DaVita, and in any event within five (5) business days if (A) any of the foregoing representations are found to have been untrue when made or cease to be true and correct at any time during the Term and (B) an action or investigation arises that could result in the conviction of a criminal offense, or the exclusion of it, or any of its Affiliates or personnel from the Medicare program, any state health care program or would otherwise result in it, its Affiliates or personnel being excluded as set forth in this Section 7.2.2.

7.3 Product Representations and Warranties.

7.3.1 General Compliance. Nuwellis represents and warrants that each Product purchased or rented by DaVita hereunder shall: (a) be safe and merchantable with respect to products of that kind and shall not be adulterated or misbranded within the meaning of the FFDCA or any applicable Law; (b) be fit for the purposes and indications described in the Product's labeling, package inserts and instructions for use; (c) not be an article that may not be introduced into interstate commerce under applicable Law; (d) not be manufactured, sold or shipped in violation of any applicable Law; and (e) be provided free and clear of any third party liens, assignments, security interests or encumbrances of any kind.

7.3.2 Product Performance.

(a) The Rental Price of the Products rented by DaVita under this Agreement include all service and maintenance (other than an annual calibration fee to be paid by DaVita for each console rented or purchased by DaVita hereunder), and, during the Pilot Period, Nuwellis represents and warrants that each such Product rented by DaVita hereunder shall (i) conform to the specifications and labeling for such Product; and (ii) be free from defects in design, materials, manufacture and workmanship. In addition to any other rights or remedies available to DaVita, in the event a Product fails to comply with the foregoing warranties during such Product's Warranty Period as defined below, Nuwellis shall, at Nuwellis's sole cost and expense, promptly repair or replace the non-conforming Product. In the event Nuwellis fails to correct the non-conformance, Nuwellis shall accept a return of any such non-conforming Product for a pro ratable refund of the Rental Price paid by DaVita, at Nuwellis's sole cost and expense, F.O.B. Origin, Freight Collect, pursuant to Section 5.5 of this Agreement.

(b) The Purchase Price of each Product includes a twelve (12) month Product performance warranty, which commences upon delivery of such Product to a DaVita Facility ("Warranty Period"). During the Warranty Period, Nuwellis represents and warrants that, each of the Products purchased by DaVita hereunder shall (i) conform to the specifications and labeling for such Product; and (ii) be free of defects in design, materials, manufacture or workmanship. In addition to any other rights or remedies available to DaVita, in the event a Product fails to comply with the foregoing warranties, Nuwellis shall, at Nuwellis's sole cost and expense, promptly repair or replace the non-conforming Product. In the event Nuwellis fails to correct the non-conformance, Nuwellis shall accept a return of any non-conforming Products for a full refund of the Purchase Price paid by DaVita, at Nuwellis's sole cost and expense, F.O.B. Origin, Freight Collect, pursuant to Section 5.5 of this Agreement; provided, however, that nothing in this section limits the obligations of Nuwellis under Section 8.

7.3.3 No PHI. No Product purchased or rented hereunder contains or is able to contain any personally identifiable information ("PII") or protected health information ("PHI") (as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, "HIPAA").

7.3.4 Service Warranties. For all installation, training, warranty service, extended service, maintenance service, marketing, sales support, technical or any other services provided by Nuwellis in connection with the sale of the Products hereunder, Nuwellis represents and warrants that such services shall be performed by duly qualified personnel in a timely, safe, professional, competent, good and workmanlike manner and in accordance with industry standards. In addition to any other rights or remedies available to DaVita, in the event a service fails to comply with any warranty, Nuwellis shall, at Nuwellis's sole cost and expense, promptly correct the non-conforming service. In the event that Nuwellis fails to correct the non-conformance, Nuwellis shall, as elected by DaVita provide a full refund of the Purchase Price paid for such non-conforming service, and, with respect to any ongoing service, terminate the service and refund any prepaid fees for undelivered services.

7.3.5 Intellectual Property Rights. Nuwellis represents and warrants to DaVita that (a) it has investigated the design and specifications for all Products to determine if any of the Products (or the possession or use thereof) infringe or misappropriate the Intellectual Property Rights of any third party, and (b) has determined that the Products and the possession and use thereof by DaVita in the manner intended by Nuwellis do not infringe or misappropriate the Intellectual Property Rights of any third party. If the Products and the use thereof are covered by any Intellectual Property Rights of Nuwellis or its Affiliates, provided DaVita has paid the Purchase Price or Rental Price for the Products, Nuwellis hereby grants to DaVita a nonexclusive, worldwide, perpetual, irrevocable, royalty-free, fully paid up, transferable and sublicensable license under such Intellectual Property Rights to use, sell, have sold and import such Products without restriction.

8.0 COMPLIANCE

8.1 Access to Books; Recordkeeping. The Parties agree that, if the Agreement is determined to be a contract within the purview of Section 1861(v)(1)(I) of the Social Security Act and the regulations promulgated in implementation thereof at 42 CFR Part 420, Nuwellis, its agents, employees, officers, and directors agree to make available to the Secretary of the Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, and their duly authorized representatives access to the books, documents, and records of the respective Party and such other information as may be required by the Secretary or the Comptroller General to verify the nature and extent of the costs incurred pursuant to this Agreement. The obligation of Nuwellis to make records available shall extend for four (4) years after the furnishing of the last Product under this Agreement or any renewal. If Nuwellis carries out its obligations under this Agreement through a subcontract worth Ten Thousand Dollars ($10,000) or more over a twelve (12) month period with a related organization, the subcontract will also contain an access clause to permit access by the U.S. Department of Health and Human Services, the U.S. Comptroller General, and their duly authorized representatives to the related organization's books and records. Nothing in this Section is intended to waive any right either Party may have under any applicable Laws to retain in confidence information included in records so requested.

8.2 Discount Laws and Regulations. Any Discounts issued by Nuwellis to DaVita under this Agreement may constitute a discount within the meaning of 42 U.S.C. §1320a-7b(b)(3)(A). DaVita may have an obligation to properly disclose and appropriately reflect each Discount to any state or federal program that provides cost or charge based reimbursement to DaVita for the items to which each such Discount applies. In order to assist DaVita's compliance with any such obligations, Nuwellis shall fully and accurately report each Discount on statements submitted to DaVita. In the event the value of a Discount is not known at the time of sale, Nuwellis shall fully and accurately report the existence of such Discount on statements submitted to DaVita, and when the value of such Discount becomes known, provide DaVita with documentation of the calculation of such Discount and the specific Product purchases or rentals to which such Discount applied. Nuwellis shall also provide any other information requested by DaVita in order to comply with any such obligations, and Nuwellis shall not impede DaVita from meeting its obligations under this Section 8.2 or applicable Laws.

8.3 Compliance with DaVita Policies and Procedures. At all times during the Term, Nuwellis and its personnel shall comply with DaVita's Code of Conduct available at https://www.davita.com/about/suppliers as well as any DaVita policies and procedures provided to Nuwellis (or its personnel) during the Term related to events, employee training, patient interactions and access to DaVita Facilities or Hospitals or such other policies applicable to Nuwellis's performance of its obligations under this Agreement.

8.4 No Remuneration. Nuwellis represents and warrants that Nuwellis has not, is not obligated to, and will not (a) make any payment or provide any remuneration or items of value to any third party or to DaVita, DaVita Facilities, Hospitals or their Affiliates, officers, directors or employees in return for DaVita entering into this Agreement; or (b) accept gratuities which would influence its impartiality, create a conflict of interest, or create the appearance of a bribe or impropriety relative to the purchases made pursuant to this Agreement.

8.5 No Conflicts. Nuwellis represents and warrants that there are no current or potential conflicts of interest between employees and representatives of Nuwellis selling or renting Products and DaVita or any DaVita Facilities or their employees, representatives or independent contractors (including physicians) possibly involved in the purchasing decision process.

8.6 Product Labeling Event. Within two (2) business days of a Product Labeling Event, Nuwellis shall deliver a written notice to DaVita which: (a) describes in reasonable detail the reasons for and causes of the Product Labeling Event; (b) describes the impact and effect the Product Labeling Event may have on DaVita's use of the affected Product(s); and (c) includes either (i) a copy of the amendment, change, revision, or modification to the Product manual, labeling, package inserts, safety information, technical specifications, or any other information, with respect to the Product(s) subject to the Product Labeling Event; or (ii) a copy of the public health advisory issued by any applicable Governmental Authority with respect to the Product(s) subject to the Product Labeling Event. Nuwellis shall respond to any questions, inquiries, or requests for additional information that DaVita may have about any Product Labeling Event. Nuwellis shall reimburse DaVita for any and all of DaVita's reasonable out-of-pocket expenses associated with such Product Labeling Event.

8.7 Product Change Event. Within five (5) business days of a Product Change Event, Nuwellis shall deliver a written notice to DaVita describing the Product Change Event in reasonable detail and including a copy of the information or data relating to such Product Change Event. Nuwellis shall provide a reduction in the Purchase Price for any Product(s) affected by a Product Change Event, if applicable, subject to good faith negotiations, but in no event later than thirty (30) calendar days following the date of Nuwellis's notice of the Product Change Event, so as to place DaVita in the same economic position that DaVita was in immediately prior to such Product Change Event.

8.8 Recalls. Nuwellis represents and warrants that Nuwellis is not aware of any facts which are reasonably likely to cause (i) a Recall of the Products; (ii) a change in the marketing classification or a material change in the labeling of the Products or (iii) termination or suspension of the marketing of the Products. In the event a Product is the subject of a Recall, Nuwellis shall notify DaVita within two (2) business days of being made aware of any such Recall. Nuwellis shall work in conjunction with DaVita to make all contacts with DaVita Facilities and the FDA. Nuwellis shall be responsible for coordinating all activities in connection with any such Recall and shall make all statements to the media, including press releases and interviews for publication or broadcast, provided, however, that in no event may Nuwellis reference DaVita in any such statements. DaVita reserves the right, in its sole and reasonable discretion, to take any actions necessary to comply with all applicable Laws and general guidance issued by the FDA or any applicable Governmental Authority. DaVita may independently terminate or otherwise restrict use of any affected Products used within DaVita or DaVita Facilities (e.g., quarantine or withdraw Products or communicate with DaVita clinicians and patients) without Nuwellis's consent. Nuwellis shall reimburse DaVita for direct and actually incurred costs related to (a) the aggregate price for all units of Products that are defective pursuant to the Recall; (b) reasonable and out-of-pocket expenses relating to such Recall, which could include expenses associated with implementation of a strategy for the Recall, costs of cover, retrieval, transportation, examination, analysis, decontamination, destruction, correction, repair, replacement, modification, relabeling, storage, returns, recovery, cancellation charges, notifications, advertising, warnings, Recall instructions, follow-up and effectiveness checks and reconditioning); and (c) any losses incurred by DaVita or its affiliates in defending a third-party Claim arising out of a Recall. Any Products affected by a Recall may be returned to Nuwellis for a full refund of the Purchase Price or pro ratable Rental Price, as applicable, paid by DaVita, at Nuwellis's sole cost and expense, F.O.B. Origin, Freight Collect.

9.0 GOVERNING LAW; DISPUTE RESOLUTION

9.1 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware and controlling U.S. federal law without regard to conflicts of law principles.

9.2 Arbitration. Any Dispute, including the interpretation and enforcement of this arbitration clause, will be settled by arbitration conducted in Denver, Colorado, in accordance with the then in effect Commercial Rules of the American Arbitration Association ("AAA Rules"), as modified by the following:

(a) *Arbitrators*. There shall be a single arbitrator where the amount in controversy (in the aggregate including claims and counterclaims, but irrespective of any potential award of costs or attorneys' fees) does not exceed Four Million Dollars ($4,000,000). If the Parties cannot agree on the identity of the arbitrator within ten (10) days of the filing of the arbitration demand, then the arbitrator shall be selected pursuant to the AAA Rules. There shall be a panel of three (3) arbitrators for any Dispute in which the amount in controversy (as defined above) equals or exceeds Four Million Dollars ($4,000,000). Each Party shall select an arbitrator at the time of the filing of the Demand for Arbitration or the Response thereto, respectively, and the Chair of the Panel shall be appointed pursuant to the AAA Rules following the appointment of the second arbitrator.

(b) *Award*. The arbitrator or arbitrators shall issue a reasoned award. The award shall include a determination of which Party, in their view, is the prevailing party. The prevailing party shall be entitled to recover its costs of the arbitration from the losing party, provided, however, that each Party shall be responsible for its own attorneys' fees. The award shall be enforceable in any court of competent jurisdiction.

(c) *Confidentiality.* The Parties shall treat the arbitration as confidential, including any documents or testimony exchanged during the course of the arbitration ("Arbitration Materials"), as well as the fact of the arbitration itself. If either Party believes it is required by law to disclose Arbitration Materials or the existence of the arbitration, they shall provide the other Party with seven (7) days' prior notice, so that the other Party may attempt to protect the disclosure of that information. The Parties agree that the wrongful disclosure of confidential materials without proper notice shall constitute an irreparable harm. However, nothing shall prevent either Party from disclosing its own documents or information, even though that material may be used in the arbitration.

9.3 Injunctive Relief. Notwithstanding the foregoing, each Party may institute proceedings in a federal or state court of competent jurisdiction to seek temporary or preliminary injunctive relief (a) to enforce the other Party's confidentiality obligations under this Agreement, or (b) to preserve the status quo pending the resolution of any Dispute through arbitration.

10.0 LIABILITY; INDEMNIFICATION

10.1 EXCLUSION OF DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STATUTE, EQUITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT (A) DAMAGES CAUSED BY A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; (B) DAMAGES AND AMOUNTS PAYABLE PURSUANT TO (I) NUWELLIS' INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT FOR ANY THIRD PARTY CLAIM AND/OR (II) ANY INSURANCE OBLIGATIONS UNDER THIS AGREEMENT; OR (C) DAMAGES ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR FAILURE TO COMPLY WITH APPLICABLE LAWS. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

10.2 Mutual Indemnification.

(a) Nuwellis will indemnify, defend, release, and hold DaVita Indemnitees harmless from and against all Claims, that they or any of them may sustain or incur, arising out of or relating to, or otherwise in connection with, any of the following, (a) the negligent or reckless acts or omissions, or willful misconduct of Nuwellis or any Nuwellis personnel or subcontractor; (b) Nuwellis's breach of any representation, warranty, covenant or obligation in this Agreement or failure to comply with applicable Laws; (c) the use of any Product by DaVita in accordance with its labeling and instructions for use; (d) Nuwellis's design, manufacturing, processing, labeling, marketing, storage, handling or sale of Products (including, without limitation, Claims for property damage, loss of life, or bodily injury); (e) any defect in the Product; (f) any Product Recall; (g) the Customer Product Contract(s) (as defined in Exhibit A), including, without limitation, any failure to perform or other breach of any kind between Nuwellis and any Hospital; (any representations, agreements, understandings, or other statements, whether oral or written, including, without limitation marketing materials and Training Materials, made by Nuwellis to any Hospital or DaVita Facility regarding the Products or Ultrafiltration Services; and

(b) DaVita will indemnify, defend, release, and hold Nuwellis Indemnitees harmless from and against all Claims, that they or any of them may sustain or incur, arising out of or relating to, or otherwise in connection with, any of the following (a) claims for property damage, loss of life, or bodily injury resulting from DaVita's negligence or reckless acts or omissions, or willful misconduct of DaVita or any DaVita personnel or; or (b) any DaVita-authored modifications to Nuwellis marketing materials and Training Materials, as made by DaVita to any Hospital or DaVita Facility regarding the Products or Ultrafiltration Services; and in connection with the use of the Products.

10.3 Intellectual Property Indemnification. Nuwellis will defend, indemnify, release and hold the DaVita Indemnitees harmless from and against any third-party Claims that they or any of them may sustain or incur, arising out of or relating to, or otherwise in connect with, the actual or alleged infringement, misappropriation or other violation of Intellectual Property Rights arising from DaVita's use of the Products purchased or rented pursuant to this Agreement. If any such claim materially interferes with DaVita's use of the Products, Nuwellis shall, at DaVita's option and promptly upon DaVita's request, and at Nuwellis's sole cost and expense: (a) substitute functionally equivalent, non-infringing Products; (b) modify the affected Product so that it no longer infringes but remains functionally equivalent; (c) obtain for DaVita the right to continue using the affected Product on substantially the same terms as provided in this Agreement. If the foregoing are not commercially reasonable, Nuwellis shall notify DaVita in writing and refund the Purchase Price or Rental Price, as applicable, paid by DaVita for the affected Product and may cease supplying the affected Product to DaVita; provided that Nuwellis (i) simultaneously stops supplying such Product to all other third parties and (ii) allocates any supplies of such Product in accordance with Section 6.3.1(a). Any return by DaVita pursuant to this Section 10.3 will be sent back to Nuwellis in DaVita's sole and absolute discretion, at Nuwellis's sole cost and expense, F.O.B. Origin, Freight Collect.

10.4 Indemnification Procedures. DaVita shall have the right to participate in the defense of third party Claims through counsel of its own choosing. However, if Nuwellis does not assume full control over the defense of a third party Claim submitted to Nuwellis by DaVita, then DaVita will have the right to defend the third party Claim in such manner as it may deem appropriate, at Nuwellis's cost and expense.

10.5
Insurance. During the Term, Nuwellis will maintain, at its own expense, insurance coverage in accordance with the limits and requirements as set forth on Exhibit F. Any limits on Nuwellis's insurance coverage will not be construed to create a limit on its liability with respect to any of its obligations hereunder, including any Claims.

11.0 CONFIDENTIALITY

11.1 Confidentiality Obligations. Confidential Information shall be held in confidence by the Receiving Party and, except with the Disclosing Party's prior written consent, will only be disclosed to the Receiving Party's employees, contractors or representatives who have a need to know such information for the purpose of performing or receiving benefits under the Agreement ("Purpose").

11.2 Restrictions on Use of Confidential Information. The Receiving Party shall: (a) maintain the Disclosing Party's Confidential Information as confidential taking all reasonable steps to prevent any unauthorized use or disclosure of such Confidential Information and to ensure that its employees, contractors or representatives comply with the Receiving Party's confidentiality obligations hereunder; (b) use the Disclosing Party's Confidential Information solely for the Purpose; and (c) not disclose the Disclosing Party's Confidential Information to any party without the Disclosing Party's written permission, except that the Receiving Party may disclose such Confidential Information to its employees, contractors, or representatives who (i) have a need to know such information for the Purpose, (ii) are informed of the confidential nature of such information, and (iii) are bound by an obligation of confidentiality no less restrictive than the obligations herein. The Receiving Party shall be responsible for any unauthorized disclosure or use of Disclosing Party's' Confidential Information by any party to whom the Receiving Party discloses such Confidential Information. The foregoing confidentiality obligations shall survive expiration or earlier termination of this Agreement for a period of five (5) years thereafter, unless such Confidential Information constitutes a trade secret, and in such event, these obligations shall continue for so long as such Confidential Information constitutes a trade secret. Notwithstanding the foregoing, DaVita may copy, retain and use Nuwellis Confidential Information on an ongoing basis as reasonably necessary for its ongoing use of any Products.

11.3 Exceptions. The foregoing obligations apply to all Confidential Information, unless and until such time as the Receiving Party can demonstrate with competent evidence that such Confidential Information: (a) is or became generally available to the public, through no fault of the Receiving Party and without breach of this Agreement; (b) is or was already in Receiving Party's possession without restriction prior to any disclosure by the Disclosing Party; (c) is or has been lawfully disclosed to the Receiving Party by a third party without an obligation of confidentiality; or (d) was developed independently by the Receiving Party without access to, use of or reference to the Disclosing Party's Confidential Information.

11.4 Required Disclosure. Notwithstanding Sections 11.1 and 11.2, the Receiving Party may disclose the Disclosing Party's Confidential Information in response to a valid court order or other legal process but only to the extent required by that order or process and only after the Receiving Party has given the Disclosing Party prompt written notice, if permitted, and the opportunity to seek a protective order or confidential treatment of such Confidential Information (with the reasonable assistance of the Receiving Party, if the Disclosing Party so requests).

11.5 Public Announcements; Authorized Disclosure. Neither Party shall make any public announcement or other public disclosure or public statement concerning this Agreement or the transactions contemplated hereunder without the prior written consent of the other Party, except if, in the judgment of a competent third party securities lawyer, such disclosure is required by applicable Law, Governmental Authority or pursuant to the rules of any securities exchange, but only to the extent so required and after the Receiving Party has given the Disclosing Party prompt, advance written notice, if permitted, and a reasonable opportunity to seek a protective order or confidential treatment of any Confidential Information included in such disclosure (with the reasonable assistance of the Receiving Party, if the Disclosing Party so requests). The proviso in the first sentence of this Section shall not apply to Confidential Information included in any cost report filed under Title XVIII or Title XIX of the Social Security Act, or health care program of any Governmental Authority.

11.6 Equitable Relief. The Parties acknowledge that Confidential Information is unique and valuable and that any breach or threatened breach of this Agreement will result in irreparable injury to the Disclosing Party, for which monetary damages alone would not be an adequate remedy. Each Party therefore agrees that, in addition to any other legal or equitable remedies available, the Disclosing Party shall be entitled to specific performance and an injunction or other equitable relief as a remedy for any threatened or actual breach of this Agreement. Each Party waives any requirement for the securing or posting of any bond in connection with such remedy, and the Disclosing Party shall not be required to prove damages in order to avail itself of such equitable relief.

12.0 MISCELLANEOUS

12.1 Quarterly Meetings. Upon DaVita's request but not more than once per calendar month during the Pilot Term and quarterly during the remainder of the Term, Nuwellis and DaVita will meet either in person or by phone in DaVita's sole discretion, to discuss any issues that DaVita may have with respect to the Products or the transactions contemplated under this Agreement, including any event or circumstance that is reasonably likely to result in a Failure to Supply Event during the immediately following calendar year and potential mitigation strategies.

12.2 Right to Audit. Once per calendar year during the Term DaVita shall have the right to conduct an audit of Nuwellis's books, documents, and records (whether in hard copy, electronic or other form) that pertain to (a) the accounts of DaVita, its Affiliates and DaVita Facilities, (b) Nuwellis's compliance with the terms of this Agreement, or (c) the amounts payable for the Products or services hereunder. DaVita shall exercise such audit right only during normal business hours and with reasonable advance written notice to Nuwellis at any time other that the first fiscal quarter of Nuwellis. The audit may be conducted by employees of DaVita or its Affiliates (including contract employees) or by an external auditing firm selected by DaVita, using a methodology determined by DaVita. The cost of the audit, including the cost of the auditors, shall be paid by DaVita. DaVita shall have no obligation to pay any costs incurred by Nuwellis, its employees or agents in cooperating with DaVita in such audit. The Parties agree to use good faith efforts to resolve any dispute that may arise from any audit report issued pursuant to this Section 12.2.

12.3 Notices. Any notice required under this Agreement must be in writing and sent to each Party's representatives at: (a) if to Nuwellis, 12988 Valley View Road, Eden Prairie, Minnesota 55344 Attention: President and Chief Executive Officer; and (b) if to DaVita, DaVita Inc., 2000 16th Street, Denver, Colorado 80202, Attention: Steve Phillips, with a copy to DaVita Inc., 2000 16th Street, Denver, Colorado 80202 Attention: Group General Counsel, DaVita Venture Group. Notices will be delivered in person or by means evidenced by a delivery receipt or acknowledgement (certified or registered mail, postage prepaid and return receipt requested, or via overnight courier). Notices will be effective upon receipt or, if refused, five (5) business days following transmission as provided above. The addresses in this Section 12.3 may be changed by providing written notice to the other Party.

12.4 Assignment; Change of Control. This Agreement (and all Purchase Orders submitted hereunder) will be binding upon and inure to the benefit of the Parties hereto, but shall not be assignable or delegable by any Party hereto without the prior written consent of the other Party; provided, however, that nothing in this Agreement or any Purchase Order shall or is intended to limit the ability of DaVita or Nuwellis to assign or delegate, in whole or in part, any of its rights or obligations under this Agreement or any Purchase Order, without the consent of Company to: (a) any Affiliate; or (b) in the event DaVita undergoes a Change of Control, the purchaser in such transaction.; or (c) in the event Nuwellis undergoes a Change of Control, the purchaser in such transaction so long as such purchaser does not provide renal care services or manufacture products utilized to treat renal failure. For purposes of this Agreement, a "Change of Control" shall mean the purchase of all or substantially all of the assets or equity interests of a Party (or any successor entity) whether by reorganization, merger, sale of assets, or sale of equity interests.

12.5 Subcontractors. Nuwellis shall not subcontract or otherwise delegate its responsibilities under this Agreement or any Purchase Order without DaVita's prior written approval in each instance. Nuwellis shall cause its contractors and subcontractors to comply with the terms and conditions of this Agreement. DaVita's approval shall not relieve Nuwellis of its obligations under this Agreement, and Nuwellis shall be fully responsible and liable for the acts and omissions of its contractors and subcontractors (and their respective employees) as if they were Nuwellis's own acts or omissions.

12.6 Relationship of the Parties. This Agreement is not intended to create and will not be construed as creating between Nuwellis and DaVita the relationship of affiliate, principal and agent, joint venture, partnership, or any other similar relationship, the existence of which is hereby expressly denied. Neither Party will have (nor will it hold itself out as having) any right, power, or authority to make or incur any legally binding agreement, obligation, representation, warranty, or commitment on behalf of the other Party or to direct any action of or activity by the other Party or any of its officers, directors, members, managers, employees, or agents.

12.7 No Third Party Beneficiaries**.** With the exception of DaVita Facilities and Affiliates, there are no third party beneficiaries to this Agreement.

12.8 Headings and Interpretation. Headings are included for the purpose of convenience only and shall not affect the interpretation of any provision of this Agreement or any Exhibit. Wherever the words "including" or "include" are used in this Agreement, they shall be deemed to be followed by the phrase "without limitation."

12.9 No Limitation of Rights and Remedies. The various rights and remedies provided in this Agreement will be cumulative and in addition to any other rights and remedies to which the Parties may be entitled to pursue at law or in equity. The exercise of one or more of such rights or remedies will not impair the right of either Party to exercise any other right or remedy at law or in equity.

12.10 No Use of Name, No Publicity. Nuwellis shall not use DaVita's names, trade names, service marks, trademarks, trade dress, or logos, or any of its employees' names, or refer to DaVita, in any public disclosure, including for marketing or promotional purposes, without DaVita's prior written approval in each instance, which DaVita may withhold, condition, deny and/or revoke in its discretion, except as permitted by Section 11.5. .

12.11 Waiver. Neither Party's failure to enforce any rights under this Agreement shall be deemed to be a waiver of that or any other rights nor shall it create a continuing waiver or expectation of non-enforcement.

12.12 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon any determination that any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

12.13 Survival. Except as otherwise expressly provided in the Agreement, all covenants, agreements, representations, obligations relating to confidentiality, compliance with Laws, indemnity, access to records, and warranties, express or implied, and any other terms that by their nature must survive the Term to give their intended effect, shall survive and remain in full force and effect following the expiration or earlier termination of this Agreement for any reason, and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.

12.14 Amendment. This Agreement and any Exhibits or supporting documents identified as part of this Agreement may be altered, amended or revoked only by an instrument in writing by each Party.

12.15 Counterparts and Signatures. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute the same instrument. The Parties agree that facsimile transmission, PDF of original signatures or electronic signatures will constitute and be accepted as original signatures.

12.16 Order of Precedence. The following order of precedence applies in the event of any conflict between the components of this Agreement: (a) the main body of this Agreement, (b) the Exhibits to this Agreement, and (c) the applicable Purchase Order. For the avoidance of doubt, no terms and conditions contained in any Nuwellis quotation, order forms or confirmations, delivery documents, invoices or other documentation related to the purchase and sale of Products hereunder shall apply to any Purchase Order submitted by DaVita to Nuwellis.

12.17 Entire Agreement. This Agreement together with the Exhibits attached hereto and documents referenced herein constitutes the complete and final agreement of the Parties with regard to the subject matter hereof. The Parties agree that they have not relied, and are not relying, on any oral or written promises, terms, conditions, representations or warranties, express or implied, outside those expressly stated or incorporated by reference in this Agreement. This Agreement may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealings between the Parties not expressly made a part of this Agreement.

12.18 Authority. Any entity signing this Agreement on behalf of any other entity hereby represents and warrants in its individual capacity that it has full authority to do so on behalf of the other entity. Any individual signing this Agreement on behalf of an entity hereby represents and warrants in his/her individual capacity that he/she has full authority to do so on behalf of such entity.

12.19 Force Majeure. The obligations of either Party to perform under this Agreement will be excused during each period of delay caused by acts of God, war or terrorism, or government orders which are beyond the reasonable control of the Party obligated to perform and prevents the Party from being able to perform (a "Force Majeure Event"). In the event that either Party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such Party shall: (a) immediately notify the other Party in writing of such Force Majeure Event and its expected duration; and (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. In the event that any Force Majeure Event delays a Party's performance for more than ninety (90) days following notice by such Party pursuant to this Agreement, the other Party may terminate this Agreement immediately upon written notice to such Party; provided, however, that nothing in this section limits the obligations of Nuwellis under Section 8.

13.0 DEFINITIONS. Capitalized terms used in the Agreement shall have the meanings ascribed below. Other initially capitalized terms used in the Agreement (including an Exhibit attached hereto) are defined in the context in which they are used and shall have the meanings ascribed therein.

(a) "Affiliate(s)" means, in relation to either Party, any entity controlling, controlled by, or under common control with such Party, for only so long as such control exists. For these purposes, "control" shall refer to: (i) the possession, directly or indirectly, of the power to direct the management or policies of the entity, whether through the ownership of voting securities, by contract, or otherwise, or (ii) the ownership of more than fifty percent (50%) of the voting securities or other ownership interest of an entity.

(b) "Claims" means any claims, demands, actions, liability, loss, proceedings or suits and any related liability, loss, damage, expense, and costs (including awards, fines, penalties and the reasonable costs of investigation, defense, attorneys' fees and any remedial actions), of whatever form or nature, incurred or sustained by a Party.

(c) "Confidential Information" means (i) the terms and conditions of this Agreement; (ii) with respect to Nuwellis, any information or material that is, at the time of disclosure, marked or, if disclosed orally, visually, or in other non-tangible form, identified in writing as confidential or proprietary information; (iii) with respect to DaVita, all data, information, and other materials disclosed or otherwise made available by or on behalf of DaVita to Nuwellis, whether in oral, electronic, visual, written, or any other form, including (A) all information regarding DaVita's or any of its Affiliates' Intellectual Property, business, business plans, technology, strategy, operations, finances, sales, supply chain, transactions, patients, databases, or customers; (B) all information maintained in DaVita internal-only documentation or web sites; and (C) all data, information, and materials developed, generated, or derived from any of the foregoing, and (iv) all information which by its nature and the circumstances should reasonably be considered to be confidential information.

(d) "DaVita Clinics" means the clinics, business offices and other facilities owned or managed by DaVita Inc. or any of its Affiliates

(e) "DaVita Facilities" means DaVita Clinics and DaVita Serviced Hospitals, including the Pilot Facility(ies).

(f) "DaVita Serviced Hospital(s)" means those certain Hospitals identified in writing by DaVita from time to time, at which DaVita or a DaVita Affiliate provides dialysis or Ultrafiltration Services to patients, including Pilot Facility(ies) pursuant to a fully executed and currently effective Service Agreement between such hospital and DaVita. DaVita may update such list from time to time to add or remove hospitals.

(g) "DaVita Indemnitees" means DaVita Inc., its Affiliates, and their respective officers, directors, employees, agents, contractors, service providers (other than Nuwellis and its Affiliates), assigns and successors.

(h) "Disclosing Party" means a Party who discloses Confidential Information to the other Party under this Agreement.

(i) "Discount" means any discounts, rebates, incentives, or other reductions in the Purchase Price or Rental Price offered by Nuwellis to DaVita under this Agreement.

(j) "Dispute" means any dispute, Claim or controversy arising out of or relating to this Agreement and/or a Purchase Order, including breach, termination or validity of the Agreement.

(k) "Failure to Supply Event" means, other than with respect to a Force Majeure Event (as defined in Section 12.9 above, Nuwellis's inability or failure to supply Products to DaVita for any reason within the timeframe established in this Agreement or by the delivery date set forth in the applicable Purchase Order, as applicable, whether or not known or anticipated by Nuwellis, including, without limitation, (i) Nuwellis's inability to supply Products to meet DaVita's Forecast pursuant to Section 6.1 or Nuwellis's Supply Commitment pursuant to Section 6.2.2; (ii) Nuwellis's discontinuation of a Product as set forth in Section 4.2; (iii) a Product Labeling Event; (iv) a Product Change Event; or (iv) a Recall.

(l) "FDA" means the United States Food and Drug Administration or any successor agency.

(m) "FFDCA" means the United States Federal Food, Drug and Cosmetic Act of 1938, as amended from time to time, and all associated regulations.

(n) "Governmental Authority" means any national, state, provincial, local, governmental, judicial, public, quasi-public, administrative, regulatory or self-regulatory authority, agency, commission, board, organization, or instrumentality.

(o) "Hospital(s)" means all hospitals, acute care settings, or other inpatient settings, including DaVita Serviced Hospitals.

(p) "Intellectual Property" means any and all inventions, innovations, modifications, discoveries, designs, methods, analyses, drawings, developments, improvements, processes, software programs, works of authorship, documentation, formulas, data, databases, techniques, know-how, trade secrets, and ideas, in each case whether or not patentable or registrable under any applicable Law, including any copyright, trademark or patent Law.

(q) "Intellectual Property Rights" means any and all rights with respect to intellectual property, including all patents, copyrights, trademarks, trade dress, trade secrets, industrial designs, mask works, moral rights, and database rights, whether registered or unregistered, and any other similar rights and protections, whether statutory, common law, or otherwise, existing anywhere in the world, including all applications, registrations, provisionals, continuations, continuations-in-part, renewals, reissues, reexaminations and extensions of or for any of the foregoing.

(r) "Law(s)" means the common law of any state or any provision of any international, federal, state, local, county, or municipal law, treaty, statute, rule, regulation, order, ordinance, standard, code, permit, directive, judgment, injunction, decree, or other decision of any arbitrator(s) or Governmental Authority legally binding on the relevant Party or its properties.

(s) "Nuwellis Indemnitees" means Nuwellis, its Affiliates, and their respective officers, directors, employees, agents, contractors, service providers, assigns and successors.

(t) "Pilot" means DaVita's delivery of inpatient Ultrafiltration Services utilizing the Products at the Pilot Facility(ies) for the duration of the Pilot Term with the goal of determining service delivery scalability, sustainability and profitability while also improving Pilot Facility satisfaction.

(u) "Pilot Facility(ies)" means those DaVita Serviced Hospitals identified by DaVita in writing from time to time, which initially include, but are not be limited to, Cedars Sinai Los Angeles, University of California Los Angeles and MedStar Health.

(v) "Post-Pilot" means the period of time following the Pilot Term through the remainder of the Term, which such period of time shall only commence if DaVita provides written notice of the Ultrafiltration Services Approval to Nuwellis pursuant to Section 1.3.1 of this Agreement.

(w) "Product(s)" means those products listed on Exhibit B hereto.

(x) "Product Change Event" means Nuwellis's receipt or discovery of any information or data, regardless of the source or derivation, with respect to any Product(s) which: (i) demonstrates that the use of Product(s) for patients may result in death, risk of death, inpatient hospitalization, prolonging of existing hospitalization, congenital anomaly, persistent or significant disruption of the ability to conduct normal life functions, or any adverse drug reaction or adverse event; (ii) demonstrates that a Product(s) no longer has the same clinical efficacy or benefit/risk profile it was understood to have immediately prior to any such information or data being received, discovered or derived by Nuwellis; or (iii) requires DaVita to purchase a higher volume of Product(s) to obtain the same clinical benefits in its patients as it was purchasing prior to any such information or data being received, discovered or derived by Nuwellis.

(y) "Product Labeling Event" means (i) the determination by Nuwellis, the Product manufacturer, or any applicable Governmental Authority, that there must be an amendment, change, revision, or modification to the Product manual, labeling (including both prescriber and patient-directed labeling), package inserts, instructions for use, safety information, technical specifications, or any other information for any Product(s); or (ii) the issuance of a public health advisory, safety communication, consumer alert, or similar notice about any Product(s) by any applicable Governmental Authority.

(z) "Purchase Order" means the applicable purchase order form, electronic data interchange, internet e-commerce, facsimile transmission or other ordering method, whether oral or written, submitted by DaVita to Nuwellis for the purchase or rental of Products under this Agreement.

(aa) "Purchase Price" means the price at which DaVita may purchase Products from Nuwellis as set forth on Exhibit B hereto.

(bb) "Rebates" means those certain payments to DaVita by Nuwellis during the Post-Pilot period pursuant to Exhibit C hereto.

(cc) "Recall" means (i) a mandatory recall ordered or initiated by the FDA or other Governmental Authority and implemented by Nuwellis, or (ii) a voluntary recall, field market withdrawal, stock recovery, or other similar action, including corrections and removals, with respect to any Product(s) and implemented by Nuwellis, whether such recall action is Nuwellis-initiated or manufacturer-initiated.

(dd) "Receiving Party" means a Party who receives Confidential Information from the other Party under this Agreement.

(ee) "Rental Price" means the price at which DaVita may rent Products from Nuwellis as set forth on Exhibit B hereto.

(ff) "Nuwellis Indemnitees" means Nuwellis, Inc., its Affiliates, and their respective officers, directors, employees, agents, contractors, assigns and successors.

(gg) "Supply Commitment" has the meaning ascribed in Section 6.2.2.

(hh) "Term" means the Pilot Term together with any Initial Term and Renewal Term.

(ii) "Ultrafiltration Services" collectively means the treatment of fluid volume overload using ultrafiltration (i) on an inpatient basis for patients with congestive heart failure, as diagnosed by a Board certified physician, or critical care patients ("Inpatient Ultrafiltration Services"); and (ii) on an outpatient basis for patients with congestive heart failure, as diagnosed by a Board certified physician ("Outpatient Ultrafiltration Services").

(jj) "Ultrafiltration Services Approval" means the determination, in DaVita's sole and absolute discretion, to proceed with the Ultrafiltration Services Rollout, as evidenced by DaVita's written notice to Nuwellis of such approval pursuant to Section 1.3.1 of this Agreement.

(kk) "Ultrafiltration Services Rollout" means the Post-Pilot delivery of Ultrafiltration Services utilizing the Products at DaVita Facilities and other Hospitals.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby indicate their acceptance of the terms of this Agreement by the signatures of their authorized representatives.

DAVITA:		**NUWELLIS:**	
By:	/s/ Ray Follett	By:	/s/ Nestor Jaramillo, Jr.
Name:	Ray Follett	Name:	Nestor Jaramillo, Jr.
Title:	Group Vice President	Title:	Chief Executive Officer and President
Date:	June 19, 2023	Date:	June 19, 2023

Exhibit List

Exhibit A: Marketing, Promotion & Support Services
Exhibit B: Products, Purchase Prices & Rental Prices
Exhibit C: Rebates
Exhibit D: Form of Warrant
Exhibit E: Form of Registration Rights Agreement
Exhibit F: Insurance Requirements

EXHIBIT A

MARKETING, PROMOTION & SUPPORT SERVICES

1. Background and Scope. The Parties desire to work cooperatively, but independently, to market and promote certain adult Ultrafiltration Services utilizing the Products to (as it relates to DaVita) sell certain Products (as it relates to Nuwellis) to Hospitals targeted by DaVita. This Exhibit describes the terms of an exclusive, cooperative marketing relationship under which DaVita will independently market and promote Ultrafiltration Services to Hospitals utilizing the Products and Nuwellis will independently sell and provision Products.

2. Exclusivity.

(a) *Exclusivity*.

Subject to the requirements set forth in Section 2(b) below, during the Exclusivity Term (defined below), DaVita shall have the co-exclusive right, along with Nuwellis, to co-market, co-promote and sell adult Ultrafiltration Services at Hospitals utilizing the Products. During the Exclusivity Term, except solely with respect to pediatric Ultrafiltration Service or as otherwise provided on Schedule A-1, Nuwellis will not (A) negotiate, enter into, or solicit any Hospital to enter into a separate agreement with Nuwellis for the provision of, or otherwise provide Ultrafiltration Services to adults; or (B) negotiate, enter into any agreement, or solicit (1) any DaVita Serviced Hospital or other provider that is not a Hospital for the purchase, sale, or rental of Products or otherwise sell or rent Products thereto, or (2) any other entity for the purchase and sale of Products for the purpose of such entity providing adult Ultrafiltration Services at Hospitals or otherwise sell or rent products thereto. Notwithstanding any other provision to the contrary contained in the Agreement, the parties acknowledge and agree that Nuwellis shall be free to negotiate, enter into, or solicit any Hospital to enter into a separate agreement with Nuwellis for the provision of consoles and consumables utilized by the Hospital for the treatment of ultrafiltration to critical care patients. For the avoidance of doubt, the Parties acknowledge and agree that this Agreement is not intended to restrict or limit (A) DaVita's ability to contract with other individuals and entities to provide the same or similar products to DaVita or DaVita Affiliates, (B) Nuwellis's ability to provide the same or similar products to entities other than as stated above, or (C) any Hospital's ability to directly engage other dialysis competitors to provide Ultrafiltration Services using the Products.

(b) *Exclusivity Requirements*. The restrictive covenants and exclusivity set forth in Section 2(a) above shall remain in full force and effect for a period of (2) years following the commencement of the Initial Term ("Exclusivity Term"). The Exclusivity Term shall automatically extend for additional two (2) year periods if, as of the end of the immediately preceding two (2) year period during the Term, Nuwellis generates gross revenues totaling at least $[**] from (i) direct DaVita purchases inclusive of services and rentals, and (ii) DaVita facilitated introductions with Serviced Hospitals that result in a purchase or rental contract between Nuwellis and Hospitals ("Exclusivity Requirements"). In the event the Exclusivity Term expires due to DaVita's failure to meet the Exclusivity Requirements, the restrictive covenants and exclusivity set forth in Section 2(a) above shall be reinstated if, at any point during the remainder of the Term, DaVita meets the Exclusivity Requirements, upon which a new two (2) year Exclusivity Term shall commence and remain in full force and effect in accordance with this Section 2(b).

3. Customer Primary Sales Responsibility.

(a) Schedule 1 attached hereto contains a list of hospitals to which DaVita currently provides acute dialysis services ("DaVita Lead Customers"). Nuwellis agrees that DaVita will be primarily responsible for calling on DaVita Lead Customers, and will not solicit or enter into any agreement with any DaVita Lead Customer to purchase or rent Products without providing 60 days' prior written notice to DaVita, during which time DaVita will have the exclusive right to negotiate with such DaVita Lead Customer. If DaVita and such DaVita Lead Customer do not enter into an agreement with respect to the sale or rental of Products during such 60 day period, Nuwellis shall have the right during the following 60 days to negotiate with such DaVita Lead Customer directly.

(b) Schedule 2 attached hereto contains a list of hospitals to which Nuwellis currently sells or rents Aquadex machines and does not have a contract for acute dialysis services with DaVita ("Nuwellis Lead Customers"). DaVita agrees that Nuwellis will be primarily responsible for calling on Nuwellis Lead Customers, and will not solicit or enter into any agreement with any Nuwellis Lead Customer to purchase or rent Products or Services without providing 60 days' prior written notice to Nuwellis, during which time Nuwellis will have the exclusive right to negotiate with such Nuwellis Lead Customer. If Nuwellis and such Nuwellis Lead Customer do not enter into an agreement with respect to the sale or rental of Products during such 60 day period, DaVita shall have the right during the following 60 days to negotiate with such Nuwellis Lead Customer directly.

(c) Nothing in this Section 3 limits the parties' obligations in Section 1 of Exhibit A.

4. Obligations of DaVita.

(a) *Sales Point of Contact.* DaVita shall be the single and primary point of contact with respect to DaVita Serviced Hospitals for all communications with all Hospitals regarding Ultrafiltration Services as well as the for the purchase and sale of Products. In the event a DaVita Serviced Hospital requests additional information regarding the purchase of Products from DaVita, DaVita will engage Nuwellis's sales contact and facilitate introductions with the DaVita Serviced Hospital.

5. Obligations of Nuwellis.

(a) *Training*. Upon DaVita's request, but not more than four (4) times per calendar year, Nuwellis will provide Product training to DaVita teammates responsible for the marketing and promotion of Ultrafiltration Services to Hospitals. Such training is in addition to user training as set forth in the main body of this Agreement.

(b *Nuwellis Sales Support Services*. Upon DaVita's request, Nuwellis shall make reasonable efforts to make available a sales representative to accompany DaVita on sales calls at a Hospital for purposes of providing the following sales support services: (i) Product demonstrations and technical guidance; (ii) sales, marketing and promotional support; (iii) information regarding the features and functionality of the Products.

(c) *Marketing Materials*. Upon DaVita's request, Nuwellis will furnish to DaVita, without charge, a reasonable supply of sales literature (as to be mutually agreed upon) and other similar information as may be reasonably required by DaVita in selling Ultrafiltration Services. Nuwellis hereby grants to DaVita a non-exclusive, irrevocable, fully transferable, fully paid up, royalty-free, sublicensable right and license to use, import, copy, reproduce, display, transmit, translate, alter, modify, create derivative works of and otherwise distribute the foregoing marketing materials, including, without limitation, co-branded marketing materials, images, excerpts and portions thereof, in any and all formats and media whether now or hereafter known or devised and by any and all technologies and means of delivery whether now or hereafter known or devised for any and all purposes relating to DaVita's sales and provision of Ultrafiltration Services. Nuwellis grants to DaVita a limited, revocable and non-transferable license to use the tradename of Nuwellis and the Nuwellis logo along with any pre-approved images of the same for purposes of identifying Nuwellis as the manufacturer and supplier of the Products in DaVita's marketing literature and materials. Subject to DaVita's prior written approval as set forth in Section 4(d) below, the Parties may elect to create co-branded marketing materials for the sole purpose of supporting DaVita's Ultrafiltration Services sales opportunities. In approving any such co-branded materials, DaVita does not grant Nuwellis any license or permission to use any DaVita Intellectual Property, including, without limitation, any trademark, tradename, trade, dress, trade secret, copyright or copyrightable work, documentation, idea, original works, work of authorship or other intellectual property.

(d) *Supplier Marketing & Promotional Activities*. Nuwellis shall not, without first obtaining DaVita's prior written consent, provide any educational, marketing, and/or promotional materials regarding the Products (or any other products and services of Nuwellis) or Ultrafiltration Services to any DaVita teammates, patients, DaVita Facilities. In the event Nuwellis desires to provide any such materials to DaVita teammates, patients, DaVita Facilities or other Hospitals, Supplier shall submit the materials to DaVita for approval at least thirty (30) days prior to the proposed publication date. DaVita may approve or reject Nuwellis request, in whole or in part, in DaVita's sole and absolute discretion. Notwithstanding the foregoing, in no event shall DaVita's approval or use of any Nuwellis materials hereunder be construed as an approval of Nuwellis' literature, or supplement or replace Nuwellis' own legal and regulatory review.

(e) *Sales Point of Contact*. If a DaVita Serviced Hospital solicits or requests Nuwellis to directly sell or rent Products, Nuwellis shall promptly notify DaVita and the Parties shall work together in good faith to determine which Party will take the lead in responding to the inquiry.

(f) *Costs & Expenses*. Nuwellis shall be solely responsible for all of its costs and expenses related to the advertising, marketing, promotion and sale of the Products. In the event new or co-branded materials are developed, DaVita and Nuwellis will share the related costs equally.

6. Sales Contracts.

(a) If a Hospital chooses to enter into a contract with DaVita to provide Ultrafiltration Services, DaVita would enter into a contract directly with the Hospital for such services and collect all associated fees ("Ultrafiltration Services Contract"). Any purchase of Products required for DaVita to provide the Ultrafiltration Services under a Ultrafiltration Services Contract would be submitted by DaVita to Nuwellis via Purchase Order pursuant to this Agreement.

(b) Subject to Section 2 of this Exhibit A, If a Hospital purchases a Product from Nuwellis, Nuwellis would enter into a contract directly with the Hospital and collect all associated fees ("Customer Product Contract"). DaVita would not be a party to the Customer Product Contract, and Nuwellis would be solely responsible for supplying, servicing and supporting all products purchased pursuant to such contract.

(c) No terms of any Customer Product Contract shall be binding upon DaVita. Any commitment made by Nuwellis to a Hospital, including, without limitation, those with respect to the Customer Product Contracts, product orders, cancellations, delivery, modifications, capabilities, or suitability of the Products shall be Nuwellis's sole and exclusive responsibility and liability.

7. Feedback. ANY FEEDBACK DAVITA PROVIDES TO NUWELLIS RELATED TO THE PRODUCTS IS PROVIDED AS-IS, WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND DAVITA SPECIFICALLY DISCLAIMS ANY WARRANTIES OF NON-INFRINGEMENT, ALL IMPLIED WARRANTIES, INCLUDING, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING DURING COURSE OF PERFORMANCE. DAVITA SHALL HAVE NO LIABILITY WHATSOEVER FOR SUCH FEEDBACK, INCLUDING WITHOUT LIMITATION, ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH SUCH FEEDBACK. NUWELLIS WILL DEFEND, INDEMNIFY, RELEASE AND HOLD THE DAVITA INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS, THAT THEY OR ANY OF THEM MAY SUSTAIN OR INCUR, ARISING OUT OF OR RELATING TO, OR OTHERWISE IN CONNECTION WITH, SUCH FEEDBACK, INCLUDING WITHOUT LIMITATION, ANY CLAIMS OR ALLEGATIONS OF INTELLECTUAL PROPERTY INFRINGEMENT.

EXHIBIT B

PRODUCTS, RENTAL PRICES & PURCHASE PRICES

Product Rental Prices

Product	Item number	Monthly Rental Price
Aquadex SmartFlow Console	120100	$[**] per month
Aquadex SmartFlow Cart/Stand	420000	Included in the above

Product Purchase Prices

PRODUCT NUMBER	**PRODUCT DESCRIPTION**	**UOM**	**QTY PER UOM**	**LIST PRICE $**	**Tier 1 DaVita price $ per unit $**	**Tier 2:**≥10 DaVita purchased **cases of Aquadex Flex Flow Blood Sets $**	**Tier 3: Capital Tier:** ≥: 2 Davita purchased **units of Aquadex Smartflow Console**
114156	Aquadex Flex Flow Blood Sets W/ HCT per case*	CA	5	5,199	[**]	[**]	[**]
114153	Coiled Dual Lumen Catheter	CA	5	2,000	[**]	[**]	[**]
115463	Coiled Dual Lumen Catheter with insertion kit	CA	5	2,250	[**]	[**]	[**]
120100	Aquadex Smartflow Console W/Cart Stand	EA	1	41,000	[**]	[**]	[**]
SmartFLow 1 YR.	1-Year Service Per Console	EA	1	2,500	[**]	[**]	[**]
SmartFLow 2YR.	2-Year Service Per Console	EA	1	4,500	[**]	[**]	[**]
SmartFLow 3YR.	3-Year Service Per Console	EA	1	6,000	[**]	[**]	[**]

*Aquadex FlexFlow Blood Set also used with Aquadex SmartFlow

EXHIBIT C

REBATES

1. Rebate. Each calendar year during the Post- Pilot Term ("Rebate Period") DaVita shall be eligible to receive a Rebate on the aggregate dollar amount of all Products and Services purchased or rented by DaVita pursuant to this Agreement during the Rebate Period, less freight, handling charges, taxes, returns, allowances and credits ("Qualified Net Purchases") if such purchases or rentals reach one of the tiers set forth in the Rebate table below. The Rebate amount for each Rebate Period shall be calculated by multiplying the DaVita's Qualified Net Purchases during each such Rebate Period by the applicable Rebate percentage set forth in the table below. All Qualified Net Purchases shall be deemed to have been made on the date that DaVita submits a Purchase Order for such Product or Service, provided that DaVita does not subsequently cancel such Purchase Order. Any failure of DaVita to earn a Rebate during any applicable Rebate Period shall not affect DaVita's ability earn a Rebate in any subsequent Rebate Period.

2.

Rebate Tiers	Qualified Net Purchases	Rebate Percentage[1]
Tier 1	[**]	[**]
Tier 2	[**]	[**]
Tier 3	[**]	[**]
Tier 4	[**]	[**]

3. Rebate Payment. Nuwellis shall pay each Rebate earned by DaVita within sixty (60) days after the end of applicable Rebate Period in which each such Rebate was earned by DaVita, except in the event this Agreement expires or is earlier terminate, in which case any earned Rebate shall be paid within sixty (60) days of the date of expiration or earlier termination. Nuwellis shall make all Rebate payments in the form of a check or via electronic payment, payable to DaVita.

4. Proration for Partial Rebate Periods. For partial Rebate Periods (regardless of whether such partial Rebate Period is due to expiration, earlier termination or otherwise), each of the Qualified Net Purchase ranges set forth in the Rebate chart above shall be prorated for the period of time the Agreement was in effect during such partial Rebate Period. To determine the prorated Qualified Net Purchase ranges for the partial Rebate Period, the (i) percentage equal to the number of days this Agreement was in effect during the applicable Rebate Period divided by three hundred sixty-five (365), and then multiplied by 100 and rounded to the nearest whole percentage point ("Rebate Adjustment Percent") (ii) shall be applied against each of the Qualified Net Purchase ranges in the Rebate chart above ("Rebate Tier Adjustment"). For illustration purposes only, the Rebate Adjustment Percent and Rebate Tier Adjustment shall be calculated as follows:

Rebate Adjustment Percent:

$$\frac{\text{\# of Days Agreement in Effect in the Rebate Period}}{365} \times 100 = X\%$$

Rebate Tier Adjustment:

X% X $[**] (Tier 1) = New Tier 1 Qualified Net Purchases (and so on and so forth)

EXAMPLE

By way of example only, if this Agreement expires after only one hundred twenty (120) days of a Rebate Period and DaVita has Qualified Net Purchases of $[**], the Rebate Tier Adjustment would equal [**], which is calculated as follows:

- 120 Days Agreement in Effect in the Rebate Period / 365 = [**] x 100 = [**]%

The Rebate Tier Adjustment results in the following new Rebate tiers for the partial Rebate Period:

Rebate Tiers	Qualified Net Purchases	Rebate Percentage
Tier 1	[**]	[**]
Tier 2	[**]	[**]
Tier 3	[**]	[**]
Tier 4	[**]	[**]

Therefore, in this example, DaVita would receive a [**] Rebate on its Qualified Net Purchases of $[**], which would be paid in accordance with Section 2 of this Exhibit C.

5. Reporting Obligations. DaVita and Nuwellis shall each comply with their reporting obligations with respect to the Rebates pursuant to Section 8.2 of the Agreement.

6. Rebate Disputes. If DaVita disagrees with any computation or statement delivered by Nuwellis to DaVita with respect to the calculation of a Rebate, DaVita may, within ninety (90) days after the receipt of such computation or statement, object to the Rebate calculation by providing written notice of such objection. The Parties will meet in good faith to attempt to resolve any dispute related to the Rebate calculation, and, if the Parties are unable to resolve any such dispute, DaVita reserves the right to conduct an audit of the Rebate calculation pursuant to Section 12.2 of the Agreement or proceed to arbitration pursuant to Section 9.2 of the Agreement.

Exhibit D Form of Warrant

EXHIBIT F

INSURANCE REQUIREMENTS

During the Term, Nuwellis shall maintain, at its own expense, insurance coverage from an insurance company authorized to do business in the state where Nuwellis is headquartered and having a general policyholder's rating of not less than "A" and a financial rating of not less than "VII" as listed in the most current AM Best Insurance Reports, as follows:

1. **Commercial General Liability:** Commercial general liability insurance, naming DaVita as an additional insured, and including a blanket waiver of subrogation, and covering bodily injury, death, property damage, personal injury, broad form products liability and contractual liability with limits not less than Six Million Dollars ($6,000,000) per occurrence [and Six Million Dollars ($10,000,000) general aggregate]. [2]

2. **Automobile Liability:** Automobile liability insurance, naming DaVita as an additional insured, and covering owned, non-owned and hired vehicles with limits not less than One Million Dollars ($1,000,000) per occurrence.

3. **Workers Compensation:** Workers compensation insurance if required by the Laws of the states in which the Agreement is to be performed, including a waiver of subrogation in favor of DaVita, and covering employer's liability with a limit not less than One Million Dollars ($1,000,000).

4. **Employee Dishonesty:** Employee dishonesty coverage, including third party client coverage, with a limit not less than Two Million Dollars ($2,000,000) per occurrence and in the aggregate.

5. **Umbrella Liability**: Umbrella liability excess of commercial general liability, auto liability and employer's liability with a limit not less than five million dollars ($5,000,000) per occurrence and in the aggregate;

If Nuwellis procures the insurance coverage required by this Exhibit F on a "claims made" policy form basis, Nuwellis must secure a reporting endorsement ("tail" coverage) to cover, for a period of three (3) years following the expiration or earlier termination of this Agreement for any reason, any Claims, acts, or omissions that may have occurred during the Term. The foregoing coverage and limits will be primary to any insurance coverages maintained by DaVita, which will be excess and non-contributory. The foregoing policies shall contain a severability of interests clause and include at least thirty (30) calendar days' written notice to DaVita of the cancellation, non-renewal, or substantial modification thereof. Any limits on Nuwellis's insurance coverage shall not be construed to create a limit on its liability with respect to any of Nuwellis's obligations under this Agreement. Nuwellis shall supply certificates of insurance evidencing the coverages set forth above and naming DaVita and its Affiliates as an additional insured on Nuwellis' insurance policies set forth above to DaVita upon request and annually at each anniversary date following the Effective Date.

Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

BY AND BETWEEN

NUWELLIS, INC.

and

DAVITA, INC.

Dated as of June 19, 2023

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "***Agreement***"), is made as of the 19th day of June, 2023, by and between Nuwellis, Inc., a Delaware corporation (the "***Company***" or "***Nuwellis***") and DaVita, Inc., a Delaware corporation (the "***Investor***"). Nuwellis and the Investor may be referred to herein individually as a "***Party***" and collectively as the "***Parties***".

This Agreement is being entered into in connection with that certain Supply and Collaboration Agreement, dated as of June 19, 2023, 2023 (as the same may be amended, supplemented or otherwise modified from time to time, the "***Transaction Agreement***") and the Common Stock Warrant Agreement, dated as of June 19, 2023, by and between the Company and the Investor (the "***Warrant***").

The Parties for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, hereby agree as follows:

Definitions. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Transaction Agreement. For purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1 "***Adverse Disclosure***" means public disclosure of material non-public information, which disclosure, in the good faith judgment of the Board, after consultation with independent outside counsel to the Company, (i) would be required to be made in any registration statement, prospectus or report filed with SEC in order for the applicable registration statement or prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the registration statement or report were not being filed, and (iii) the Company has a bona fide business purpose for not making such information public.

1.2 "***Affiliate***" means, in relation to either Party, any entity controlling, controlled by, or under common control with such Person, for only so long as such control exists. For these purposes, "control" shall refer to: (i) the possession, directly or indirectly, of the power to direct the management or policies of the entity, whether through the ownership of voting securities, by contract, or otherwise, or (ii) the ownership of more than fifty percent (50%) of the voting securities or other ownership interest of an entity.

1.3 "***Board***" means the board of directors of the Company.

1.4 "***Common Stock***" means the Company's common stock, par value $0.0001 per share and any other shares of stock issued or issuable with respect thereto (whether by way of a stock dividend or stock split or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distributions, recapitalization, merger, consolidation, other corporate reorganization or other similar event with respect to the Common Stock).

1.5 "***Confidential Information***" means (i) with respect to the Company, any information or material that is, at the time of disclosure, marked or, if disclosed orally, visually, or in other non-tangible form, identified in writing as confidential or proprietary information; (ii) with respect to Investor, all data, information, and other materials disclosed or otherwise made available by or on behalf of Investor to Company, whether in oral, electronic, visual, written, or any other form, including (A) all information regarding Investor's or any of its Affiliates' Intellectual Property, business, business plans, technology, strategy, operations, finances, sales, supply chain, transactions, patients, databases, or customers; (B) all information maintained in Investor's internal-only documentation or web sites; and (C) all data, information, and materials developed, generated, or derived from any of the foregoing, and (iv) all information which by its nature and the circumstances should reasonably be considered to be confidential information.

1.6 "***Control***" or "***Controlled***" means the ability to control the management or day-to-day affairs of an entity, whether by ownership, contract or otherwise.

1.7 "***Damages***" means any loss, action, damage, claim or liability and expenses (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, action, damage, claim or liability and expenses (or actions, proceedings or settlements in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in, or incorporated by reference in any registration statement of the Company, including any prospectus, preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or free writing prospectus as defined in Rule 405 under the Securities Act or any successor rule thereof; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state or federal securities law or any rule or regulation thereunder.

1.8 "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.9 "***Excluded Registration***" means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; (ii) a registration relating to an Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.10 "***Form S-1***" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.11 "***Form* S-3**" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits forward incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.12 "***Intellectual Property***" means any and all inventions, innovations, modifications, discoveries, designs, methods, analyses, drawings, developments, improvements, processes, software programs, works of authorship, documentation, formulas, data, databases, techniques, know-how, trade secrets, and ideas, in each case whether or not patentable or registrable under any applicable Law, including any copyright, trademark or patent Law.

1.13 "***Misstatement***" shall mean an untrue statement of a material fact or an omission to state a material fact required to be stated in a registration statement or prospectus, or necessary to make the statements in a registration statement or prospectus in the light of the circumstances under which they were made not misleading.

1.14 "***Other Shares***" shall mean shares of Common Stock, other than Registrable Securities (as defined below), with respect to which registration rights have been granted.

1.15 "***Person***" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

1.16 "***Personnel***" means, with respect to a Person, the employees, directors, officers, representatives, agents, and contractors of such Person, or any of the foregoing.

1.17 "***Registrable Securities***" means, as of any date of determination, (a) all the Common Stock issued and issuable upon exercise of the Warrant (assuming on such date the Warrant is exercised in full without regard to any exercise limitations as set forth therein), (b) any additional shares of Common Stock issued and issuable in connection with any anti-dilution provisions in the Warrant (without giving effect to any limitations on exercise set forth in the Warrant), (c) any other shares of Common Stock acquired by Investor or its Affiliates directly from the Company after date hereof, and (d) any securities issued or then issuable upon any stock split, dividend, or other distribution, merger, consolidation, recapitalization or similar event with respect to the foregoing. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when the SEC has declared a registration statement covering such securities effective and such securities have been disposed of pursuant to such effective registration statement or Rule 144.

1.18 "***Registration***" shall mean a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

1.19 "***SEC***" means the Securities and Exchange Commission.

1.20 "***Rule 144***" means Rule 144 promulgated by the SEC under the Securities Act.

1.21 "***Rule 145***" means Rule 145 promulgated by the SEC under the Securities Act.

1.22 "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.23 "***Selling Expenses***" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for Investor, except for the fees and disbursements of the selling Investor's counsel (as defined herein) borne and paid by the Company as provided in Subsection 2.6.

1.24 "***Trading Day***" means a day on which the Common Stock is traded on a Trading Market.

1.25 "***Trading Market***" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

1.26 "***Underwritten Offering***" means an offering of Common Stock or other equity securities of the Company in which such securities are sold to an underwriter or underwriters on a firm commitment basis for reoffering to the public, including any bought deal or block sale to a financial institution.

Registration Rights. The Company covenants and agrees that , from and after the Ultrafiltration Services Approval:

2.1 Demand Registration.

(a) Form S-1 Demand. Upon demand and, with respect to any Registrable Securities, if the Company receives a request from the Investor that the Company file a Form S-1 registration statement with respect to all or any portion of such Registrable Securities of Investor, then the Company shall as soon as reasonably practicable, and in any event no later than forty-five (45) days after the date such request is given by the Investor, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Investor has requested to be registered, subject to the limitations of Subsections 2.1(c), (d) and 2.3 and use its reasonable efforts to cause such registration statement to be declared effective by the SEC as soon as practicable thereafter.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from the Investor that the Company file a Form S-3 registration statement with respect to all or any portion of the Registrable Securities of Investor, then the Company shall as soon as reasonably practicable, and in any event no later than thirty (30) days after the date such request is given by the Investor, file a Form S-3 registration statement or any comparable or successor form or forms under the Securities Act covering all Registrable Securities requested to be included in such registration by the Investor, subject to the limitations of Subsections 2.1(c), (d) and 2.3 and use its best efforts to cause such registration to be effected as would permit or facilitate the sale and distribution of all of such Registrable Securities as specified in the request. At such time as the Company is qualified for the use of a Form S-3 registration statement, or the then appropriate form, for an offering to be made on a delayed on continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a "***Shelf Registration Statement***"), the holders of Registrable Securities shall have the right to request registration under on a Shelf Registration Statement (a "***Shelf Registration***"). If the Shelf Registration Statement is initially filed on Form S-1 and thereafter the Company becomes eligible to use Form S-3 for secondary sales, the Company shall, as promptly as practicable, cause such Shelf Registration Statement to be amended, or shall file a new replacement Shelf Registration Statement on Form S-3. The Company shall prepare and file with (or confidentially submit to) the Commission a Shelf Registration Statement covering all of the Registrable Securities that the holders thereof have requested to be included in such Shelf Registration within 30 days after the date on which the initial request is given and shall use its reasonable efforts to cause such Shelf Registration Statement to be declared effective by the SEC as soon as practicable thereafter.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Investor requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure by the Company of material non-public information of the Company that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than sixty (60) days after the request of the Investor is given; provided, however, that the Company may not (x) invoke this right more than twice in any twelve (12) month period, (y) defer taking action with respect to any filing under this Subsection 2.1(c) for an aggregate period exceeding ninety (90) days during any twelve (12) month period, or (z) register any securities for its own account or that of any other stockholder during any such period during which the Company is deferring taking action pursuant to this Subsection 2.1(c) with respect to a filing requested by holder other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a) (i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) subject to the last sentence of this Subsection 2.1(d), after the Company has effected two (2) registrations pursuant to Subsection 2.1(a); or (iii) if the Investor proposes to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Subsection 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(b) (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two (2) registrations pursuant to Subsection 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Subsection 2.1 until such time as the applicable registration statement has been declared effective by the SEC, unless the Investor withdraws its request for such registration and forfeits its right to one demand registration statement pursuant to Subsection 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Subsection 2.1(d).

(e) Notwithstanding anything in this Agreement to the contrary, if at any time after the Company has effected two (2) registrations pursuant to Subsection 2.1(a) the Investor desires the Company to effect a registration under this Section 2.1, the Investor shall be entitled to request, and the Company shall be obligated to effect, a registration pursuant to Subsection 2.1(a) notwithstanding the limitation to two (2) registrations under Subsection 2.1(a) above under this Subsection 2.1(e) (the "***Additional S-1 Registration***"), provided, however, that (1) all unregistered Registrable Securities then held by Investor must be included in such Additional S-1 Registration, and (2) the Company shall only be obligated by application of this sentence to effect up to one (1) Additional S-1 Registration (for an aggregate total of three (3) registrations pursuant to Subsection 2.1(a)).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Investor) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration) (a "***Piggyback Registration Statement***"), the Company shall, at such time, promptly, and in any event within thirty (30) days prior to filing any registration statement, give Investor written notice of such proposed registration. Upon the request of Investor given within twenty (20) days after such notice is given by the Company, the Company shall, in good faith, subject to the provisions of Subsection 2.3, cause to be registered all of the Registrable Securities that Investor has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not Investor has elected to include Registrable Securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

A Piggyback Registration Statement shall not be considered a demand registration for purposes for Section 2.

2.3 Underwriting Requirements.

(a) If, pursuant to any offering made in accordance with Subsection 2.1, the Investor intends to distribute the Registrable Securities covered by its request by means of an underwriting, Investor shall so advise the Company as a part of its request made pursuant to Subsection 2.1. In the event of demand registrations for an Underwritten Offering pursuant to Subsections 2.1(a) and (b), the underwriter(s) will be jointly selected by the Company and Investor, provided, however, that in the event of registrations pursuant to Subsection 2.2, the underwriter(s) will be selected by the Company in its sole discretion. In such event, the right of Investor to include Investor's Registrable Securities in such registration shall be conditioned upon Investor's participation in such underwriting and the inclusion of such Registrable Securities in the Underwritten Offering to the extent provided herein. Investor shall (together with the Company as provided in Subsection 2.4(h)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting, provided, however, that neither Investor nor any permitted assignee thereof shall be required to make any representations, warranties or indemnities except as they relate to Investor's ownership of shares and authority to enter into the underwriting agreement and to Investor's intended method of distribution, provided, further, that if the underwriter selected for the registration pursuant to this Subsection 2.3(a) requires that the Investor provide additional non-operational representations, warranties or indemnities that are customary and market standard at the time of such request, Investor shall make or provide such requested non-operational representations, warranties or indemnities to the extent being made by all other stockholders participating in the underwritten offering. The liability of Investor shall be several and not joint in all cases (except that if Investor has assigned any of its Registrable Securities to any Affiliates, the liability of Investor with respect to the representations, warranties and indemnities shall be joint and several with such Affiliates), and limited in all cases except for fraud or intentional misconduct by Investor, to an amount equal to the net proceeds from the offering received by Investor (and received by such of its Affiliates, if any).

(b) Notwithstanding any other provision of this Subsection 2.3, if the underwriter(s) advise(s) the Investor in good faith and in writing that marketing factors require a limitation on the number of shares to be included in the Underwritten Offering, the number of Registrable Securities and Other Shares that may be so included shall be allocated as follows: (i) first to the Investor; (ii) second, among all other selling stockholders requesting to include Other Shares in such registration statement based on their pro rata percentage of Other Shares held by such other selling stockholders, on an as-converted basis; and (iii) third, to the Company, which the Company may allocate, at its own discretion, for its own account, or for the account of other holders or employees of the Company. In no event shall any Registrable Securities be excluded from such underwriting unless all other securities are first excluded.

(c) In connection with any Underwritten Offering pursuant to Subsection 2.2, the Company shall not be required to include any of such Registrable Securities in such Underwritten Offering unless the Investor accepts the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion and good faith advises will not jeopardize the success of the offering by the Company. If the total number of securities, including such Registrable Securities, requested by stockholders to be included in such Underwritten Offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such Underwritten Offering, then the Registrable Securities that are included in such Underwritten Offering shall be reduced proportionally (with respect to all other shares of the Company's capital stock included or to be included in such underwriting, other than securities to be sold by the Company). Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all Other Shares (other than securities to be sold by the Company) are also reduced proportionately in the Underwritten Offering, or (ii) the number of such Registrable Securities included in the offering be reduced below thirty percent (30%) of the total number of securities included in such Underwritten Offering. For purposes of the provision in this Subsection 2.3(b) concerning apportionment, Investor and Investor's Controlled Affiliates shall be deemed to be a single "selling Investor," and any pro rata reduction with respect to such "selling Investor" shall be based upon the aggregate number of Registrable Securities owned by Investor and its Controlled Affiliates.

(d) For purposes of Subsection 2.1, a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a) and (b), fewer than fifty percent (50%) of the total number of Registrable Securities that Investor has requested to be included in such registration statement are actually included.

(e) In the case of an Underwritten Offering under Section 2.3, the price, underwriting discount and other financial terms for the Registrable Securities shall be determined by the Investor. In addition, in the case of an Underwritten Offering, Investor may withdraw it's request to participate in the registration after being advised of such price, discount and other terms and shall not be required to enter into any agreements or documentation that would require otherwise.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall use its best efforts to effect the registration of the offer and sale of such Registrable Securities under the Securities Act, and as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement, with respect to such Registrable Securities;

(b) use its commercially reasonable efforts to cause a registration statement to become effective, and keep such registration statement effective for a period of not less than one hundred twenty (120) days from the effective date of the registration statement or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Investor refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration; and (ii) in the case of any Shelf Registration, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended for up to ninety (90) days, if necessary, to keep the registration statement effective until all such Registrable Securities are sold;

(c) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all of the Registrable Securities covered by such registration statement for the period set forth in Subsection 2.4(a) above;

(d) not less than five (5) Trading Days before filing such registration statement, and not less than one (1) Trading Day prior to the filing of any prospectus or amendments or supplements thereto with the SEC, furnish to counsel of holders of such Registrable Securities copies of such documents proposed to be filed, which documents shall be subject to the review, comment and approval of such counsel;

(e) notify each selling holder of Registrable Securities, promptly and in any event within one (1) Trading Day after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement, to any prospectus forming a part of such registration statement has been filed with the SEC;

(f) furnish to the selling Investor such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Investor may reasonably request in order to facilitate the disposition of such Registrable Securities;

(g) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by Investor; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(h) in the event of any Underwritten Offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(i) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on Nasdaq or such other national exchange or trading system as the Common Stock may then trade;

(j) make available for inspection by any selling holder of Registrable Securities, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such holder or underwriter (collectively, the "***Inspectors***"), all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such Registration Statement;

(k) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(l) notify Investor promptly after the Company receives notice thereof of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed;

(m) furnish to each selling holder of Registrable Securities and each underwriter, if any, with (i) a written legal opinion of the Company's outside counsel, dated the closing date of the offering, in form and substance as is customarily given in opinions of the Company's counsel to underwriters in Underwritten Offerings; (ii) on the date of the applicable prospectus, on the effective date of any post-effective amendment to the applicable Registration Statement and at the closing of the offering, dated the respective dates of delivery thereof, a "comfort" letter signed by the Company's independent certified public accountants in form and substance as is customarily given in accountants' letters to underwriters in Underwritten Offerings; and (iii) obtain the required consents form the Company's independent certified public accountants, and if applicable, independent auditors to include the accountant's or auditors' report, as applicable, relating to the specified financial statements in the registration statement and to be named as an expert in the registration statement;

(n) in connection with any Underwritten Offering pursuant to a registration filed pursuant to Section 2.3 hereof, enter into an underwriting agreement in form reasonably necessary to effect the offer and sale of Common Stock, *provided* such underwriting agreement contains reasonable and customary provisions;

(o) after such registration statement becomes effective, notify Investor promptly of any request by the SEC that the Company amend or supplement such registration statement or prospectus;

(p) after such registration statement becomes effective, notify Investor promptly after receiving notice or obtaining knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

(q) in connection with the registration of any Registrable Securities, including in an Underwritten Offering, use commercially reasonable efforts to make available senior executives of the Company to participate in "road shows" and/or other customary marketing activities; and

(r) in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the Investor, in connection with the registration of any Registrable Securities.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of Investor that Investor shall furnish to the Company such information regarding itself, such Registrable Securities held by it, the intended method of disposition of such securities and such other information as is reasonably required to effect the registration of Investor's Registrable Securities.

2.6 Expenses of Registration. All fees and expenses (other than Selling Expenses) incurred by the Company in connection with registration, filings, or qualifications pursuant to Section 2, whether or not any Registrable Securities are sold pursuant to a registration statement, including without limitation, (i) all registration and filing fees (including, without limitation, any fees relating to filings required to be made with, or the listing of any Registrable Securities on, any securities exchange or over-the-counter trading market on which the Registrable Securities are listed or quoted); (ii) underwriting expenses (other than fees, commissions or discounts); (iii) expenses of any audits incident to or required by any such registration; (iv) fees and expenses of complying with securities and "blue sky" laws (including, without limitation, fees and disbursements of counsel for the Underwriters in connection with "blue sky" qualifications or exemptions of the Registrable Securities); (v) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities, as may be applicable); (vi) messenger, telephone and delivery expenses; (vii) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement (e.g. of independent registered public accountants of the Company); (viii) Financial Industry Regulatory Authority, Inc. ("***FINRA***") filing fees (if any); and (ix) reasonable fees and expenses of one counsel selected by Investor for the holder of Registrable Securities participating in such registration shall be paid by the Company. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement. All Selling Expenses relating to such Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Investor.

2.7 Suspension of Sales; Adverse Disclosure. The Company shall promptly notify Investor in writing if any registration statement or prospectus contains a Misstatement and, upon receipt of such written notice from the Company, Investor shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended prospectus correcting the Misstatement, provided that the Company hereby covenants to prepare and file any required supplement or amendment correcting any Misstatement promptly after the time of such notice and, if necessary, to request the immediate effectiveness thereof. If the filing, initial effectiveness or continued use of a registration statement at any time would require the Company to make an Adverse Disclosure or Misstatement, the Company may, upon prompt written notice of such action to the Investor, delay the filing or initial effectiveness of, or suspend use of, the registration statement (the ("***Demand Suspension***"). The Company shall have the right to defer the filing, initial effectiveness or continued use of any such registration statement for a period of not more than thirty (30) days provided, however, that the Company shall not be permitted to exercise a Demand Suspension more than twice or for more than a total of sixty (60) days in any 12-month period. The Company shall immediately notify the Investor upon the termination of any Demand Suspension, and shall amend or supplement the prospectus or registration statement if necessary, so it does not contain any Adverse Disclosure.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless Investor, and the partners, officers and directors of Investor, legal counsel and accountants for Investor, any underwriter (as defined in the Securities Act) for Investor; and each Person, if any, who Controls Investor, and any other underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will reimburse each Investor, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any such loss, claim, action, damage or liability or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Investor, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration except to the extent such information has been corrected in a subsequent writing prior to the date that the registration statement related to the sale of Registrable Securities to the Person asserting the claim was filed.

(b) To the extent permitted by law, Investor will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Investor selling securities in such registration statement, and any controlling Person of any such underwriter or other Investor, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Investor expressly for use in connection with such registration and has not been corrected in a subsequent writing prior to the date that the registration statement related to the sale of Registrable Securities to the Person asserting the claim was filed; and each such selling Investor will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Investor, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by Investor by way of indemnity or contribution under Subsections 2.8(a) and 2.8(c) exceed the proceeds from the offering received by Investor (net of any Selling Expenses paid by Investor), except in the case of fraud or willful misconduct by Investor.

(c) Promptly after receipt by an indemnified party under this Subsection 2.8(c) of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8(c), give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Subsection 2.8(c), only to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Subsection 2.8(c).

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8(d) but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8(d) provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8(d), then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) no Investor will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by Investor pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall Investor's liability pursuant to this Subsection 2.8(c), when combined with the amounts paid or payable by Investor pursuant to Subsection 2.8(a), exceed the proceeds from the offering received by Investor (net of any Selling Expenses of Investor), except in the case of willful misconduct or fraud by Investor.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the Underwritten Offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control provided, however, that any matter expressly provided for or addressed by the foregoing provisions that is not expressly provided for or addressed by the underwriting agreement shall be controlled by the foregoing provisions.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the Underwritten Offering, the obligations of the Company and Investor under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Investor the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit Investor to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company covenants to:

(a) make and keep available adequate current public information, as those terms are understood and defined in Rule 144 at all times;

(b) use commercially reasonable efforts to file timely with the SEC all reports and other documents required of the Company under the Securities Act and the Exchange Act ; and

(c) furnish to Investor, so long as the Investor owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written certificate by a duly authorized officer of the Company that it has complied with the reporting requirements of Rule 144, the Securities Act, and the Exchange Act, or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing Investor of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to Form S-3 (at any time after the Company so qualifies to use such form), including providing any customary legal opinions.

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not (a) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder, or (b) enter into any agreement, take any action, or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted the holders of Registrable Securities in this Agreement.

2.11 "Market Stand-off" Agreement. Investor hereby agrees that in connection with any registered offering of the Common Stock or other equity securities of the Company, and upon the request of the managing underwriting in such offering, will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company for its own behalf of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, and ending on the date specified by the Company and the managing underwriter (such period not to exceed ninety (90) days or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports, and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in applicable FINRA Rules, or any successor provisions or amendments thereto), lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any Registrable Securities, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Subsection 2.10 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement or pursuant to a trading plan pursuant to Rule 10b5-1 in effect as of the date the lock-up period commences, and shall be applicable to the Investor only if all officers and directors of the Company are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning more than one percent (1%) of the Company's outstanding Common Stock. The underwriters in connection with such registration are intended third-party beneficiaries of this Subsection 2.10 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Investor further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Subsection 2.10 or that are necessary to give further effect thereto. Notwithstanding anything to the contrary contained in this Subsection 2.10, the holder of Registrable Securities shall be released, pro rata, from any lock-up agreement entered into pursuant to this Subsection 2.10 in the event and to the extent that the managing underwriter of the Company permit any discretionary waiver or termination of the restrictions of any lock-up agreement pertaining to any officer, director or holder of greater than 1% of the outstanding Common Stock.

2.12 Termination of Registration Rights. The right of Investor to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate when there shall be no Registrable Securities outstanding, provided that the provisions of Section 2.6 (Expenses of Registration) and Section 2.8(Indemnification) shall survive such termination.

3. Confidentiality.

3.1 Obligations. Each Party and its Affiliates (each, a "***Receiving Party***") will maintain in confidence all Confidential Information disclosed to it by the other Party, its Affiliates or its or their Personnel (the "***Disclosing Party***") in connection with this Agreement, the Warrant, the Transaction Agreement and the transactions contemplated hereby and thereby (the "***Governing Agreements***"). Each Receiving Party agrees not to use, disclose, or grant use of such Confidential Information except for purposes of the activities expressly authorized in by a Governing Agreement. Each Receiving Party agrees to use at least the same standard of care as it uses to protect its own confidential information of a similar nature to protect such Confidential Information from unauthorized use or disclosure and to ensure that such Personnel do not disclose or make any unauthorized use of such Confidential Information, but in no event less than reasonable care. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information by a Receiving Party.

3.2 Exceptions. The obligations set forth in Section 3.1 shall not apply to the extent that such information: (a) was already known to a Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by a Disclosing Party; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to a Receiving Party; (c) became generally available to the public or otherwise part of the public domain after its disclosure to a Receiving Party other than through any act or omission of a Receiving Party in breach of this Agreement or any other Governing Agreement; (d) was disclosed to a Receiving Party, other than under an obligation of confidentiality by a third party who was not known by a Receiving Party to be under an obligation to a Disclosing Party not to disclose such information to others; or (e) was developed independently by a Receiving Party without any use of or reference to the Confidential Information of a Disclosing Party.

3.3 Required Disclosures. Notwithstanding Section 3.1, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that it is required to be disclosed by applicable law or a valid order of a court or other governmental authority, provided that the Receiving Party gives the Disclosing Party prompt prior written notice to the extent legally permissible so that the Disclosing Party has a reasonable opportunity to contest or limit such disclosure, and reasonably cooperates with the Disclosing Party in any such efforts. If prompt prior written notice cannot be given pursuant to Section 3.1, the Receiving Party shall use commercially reasonable efforts to seek to obtain a protective order or other appropriate confidential treatment for such Confidential Information.

3.4 Return of Confidential Information. Upon a Disclosing Party's written request, and in any event following the termination or expiration of all (but not less than all) of the Governing Agreements, the Receiving Party shall promptly return or destroy the Disclosing Party's Confidential Information.

3.5 Conflict. In the event that the provisions of this Section 3 conflict with the provisions of any other Governing Agreement with respect to the treatment of confidential information concerning the matters expressly addressed in such other Governing Agreement, the conflicting provisions of such other Governing Agreement shall control with respect to such matters.

4. Miscellaneous.

4.1 Successors and Assigns. The rights under this Agreement may be assigned by Investor to a transferee of Registrable Securities that (i) is an Affiliate of Investor; (ii) is a Person that acquires substantially all of the assets of Investor, so long as Investor has, immediately prior to such acquisition, material assets and/or operations other than the Company's capital stock; or (iii) is a Person who, through a merger consolidation, recapitalization, sale of equity interests or other transaction or series of transactions involving Investor, owns in the surviving entity after the closing a majority of the outstanding equity interests when it did not own a majority of the equity interests in Investor immediately prior to such transaction, so long as Investor or the other affiliates of Investor involved in such transactions and which such Person controls after the closing had material assets and/or operations other than the Company's capital stock immediately prior to such closing; provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement. Upon any permitted assignment of this Agreement, the assignee thereof shall be deemed to be "Investor" for all purposes and will be deemed to be a direct party to this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

4.2 Governing Law. This Agreement shall be governed in all respects by the internal laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof that would require the application of the laws of any other jurisdiction.

4.3 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

4.4 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

4.5 Notices. Any notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given: (i) when delivered, if delivered in person; (ii) on the fifth (5th) business day after dispatch by registered or certified mail; (iii) on the next business day if transmitted by national overnight courier; or (iv) the time of transmission, if such notice or communication is delivered via confirmed email prior to 5:30 P.M. New York City time, on a Trading Day or the next Trading Date after the date of transmission, if such notice or communication is delivered via confirmed email on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, in each case as follows (or at such other address for a Party as shall be specified by like notice):

If to the Company:

Nuwellis, Inc.
Attention: CEO
12988 Valley View Road
Eden Prairie, Minnesota 55344
Email: nestor.jaramillo@nuwellis.com

With copies to (which shall not constitute notice), to:

Honigman LLP
Attention: Phillip D. Torrence
650 Trade Centre Way, Suite 200
Kalamazoo, Michigan 49002-0402
Email: ptorrence@honigman.com

If to the Investor:

DaVita, Inc.
Attention: Steve Phillips
2000 16th Street
Denver, Colorado 80202

With copies (which shall not constitute notice), to:

Freshfields Bruckhaus Deringer US LLP
Attention: Scott Blumenkranz
855 Main Street
Redwood City, CA 94063
Email: scott.blumenkranz@freshfields.com

4.6 Amendments and Waivers. Any term of this Agreement may be amended, modified or terminated, and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively), only with the written consent of the Company and the Investor; provided that the Company may in its sole discretion waive compliance with Subsection 2.12(c); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party. Any amendment, modification, termination, or waiver of any term of this Agreement effected in accordance with this Subsection 4.5 shall be binding on all parties hereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

4.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law. The balance of this Agreement shall be enforceable in accordance with its terms.

4.8 Remedies. The holder of Registrable Securities, in addition to being entitled to exercise all rights granted by law, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. The Company acknowledges that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and the Company hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

4.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by Investor's Affiliates shall be aggregated together for the purpose of determining the availability of any rights of Investor under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

4.10 Further Assurances. Each Party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

4.11 Entire Agreement. This Agreement (including any schedule or exhibits hereto) and the agreements contemplated hereby, including the Governing Agreements, constitute the entire agreement of the parties with respect to the subject matter of said agreements, and said agreements supersede all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter thereof. This Agreement shall not confer any rights or remedies upon any person other than the Parties, and their respective successor and permitted assigns.

4.12 Dispute Resolution. Any unresolved controversy or claim arising out of or relating to this Agreement, shall be submitted to arbitration conducted in Denver, Colorado, in accordance with the then in effect Commercial Rules of the American Arbitration Association ("***AAA Rules***"), in effect as of the date of this Agreement. Arbitration shall be by a single arbitrator mutually agreed upon by the parties; if no agreement can be reached within 10 days after names of potential arbitrators have been proposed by AAA, then by one arbitrator who is chosen by the AAA in accordance with the AAA Rules. Judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. Before engaging in arbitration, the parties agree to first attempt to resolve the dispute informally or with the assistance of a neutral third-party mediator. Each party acknowledges that by agreeing to this arbitration procedure, such party waives the right to resolve any such dispute, claim or demand through a trial by jury or judge or by administrative proceeding. The arbitrator, and not a court, shall also be authorized to determine arbitrability. Claims will be governed by applicable statutes of limitations. The arbitrator may in his or her discretion award attorneys' fees and costs to the prevailing party. This arbitration agreement does not cover any action seeking only emergency, temporary or preliminary injunctive relief (including a temporary restraining order) in a court of competent jurisdiction in accordance with applicable law to protect a party's confidential or trade secret information. This arbitration agreement shall be construed and interpreted in accordance with the Federal Arbitration Act.

4.13 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER GOVERNING AGREEMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

4.14 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or non-defaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMPANY:

NUWELLIS, INC.

By: /s/ Nestor Jaramillo, Jr.

Name: Nestor Jaramillo, Jr.

Title: Chief Executive Officer and President

INVESTOR:

DAVITA, INC.

By: /s/ Ray Follett

Name: Ray Follett

Title: Group Vice President

Exhibit 99.1

NUWELLIS INC. ANNOUNCES PILOT AGREEMENT WITH DAVITA INC.
Supply Agreement to Pilot Ultrafiltration Therapy Services Offering in Select Markets

MINNEAPOLIS, June 20, 2023 (GLOBE NEWSWIRE) -- Nuwellis, Inc. (Nasdaq: NUWE), a medical technology company focused on transforming the lives of people with fluid overload, today announced it has entered into a Supply and Collaboration Agreement with DaVita Inc. (NYSE: DVA) to pilot Aquadex ultrafiltration therapy to treat adult patients with congestive heart failure and related conditions within select U.S. markets. Today, DaVita provides extracorporeal therapies such as continuous renal replacement therapy and apheresis to patients across a network of hospitals and outpatient clinics.

Pairing the Aquadex system with DaVita's care team could expand access to ultrafiltration therapy to millions of heart failure patients in the U.S. suffering from fluid overload and reduce related healthcare costs for providers and payers.

"We are honored that DaVita is collaborating with Nuwellis to pilot a services model alongside Aquadex," said Nestor Jaramillo, Jr., President and CEO of Nuwellis. "We believe DaVita's clinical infrastructure could potentially help accelerate the clinical adoption of ultrafiltration when first-line medical treatments are ineffective. Our clinical and commercial teams are excited and ready to begin working together on the pilot program to introduce ultrafiltration to a broader patient population."

"Ultrafiltration therapy using Aquadex is a novel solution for patients suffering from fluid overload – a key driver of negative outcomes in heart failure patients. It offers clinicians the opportunity to restore fluid balance and alleviate heart failure symptoms precisely and gently," said John Jefferies, MD, Chief Medical Officer of Nuwellis. "We believe the pilot with DaVita can support the role ultrafiltration can play in heart failure patient management and could enable accelerated commercial expansion of this therapy. Near-term, there's value in providing these services in acute settings for hospital patients. Nuwellis also sees a future path to treating heart failure patients earlier, in outpatient settings."

The pilot program is expected to launch by the end of the third quarter 2023 and extend through May 31, 2024. Via the pilot, ultrafiltration therapy using Aquadex would be available at a combination of DaVita's hospital customers and outpatient center locations, with both companies collaborating on the roll-out of the therapy, clinician training, and patient support. At the conclusion of the pilot, DaVita has the option to extend the supply agreement with Nuwellis for continued provision of both inpatient and outpatient ultrafiltration services for up to 10 years.

In conjunction with the agreement, Nuwellis issued DaVita a warrant for approximately 1.3 million shares of Nuwellis Inc. common stock. The warrant is subject to certain vesting milestones, and a blocker that prevents the warrant from being exercised for a number of shares that would represent greater than 19.9% ownership in Nuwellis. Nuwellis has also granted DaVita registration rights and rights to participate in future equity financings of Nuwellis, in each case conditioned on DaVita electing to extend the Supply and Collaboration Agreement after completion of the pilot. Details of the Supply and Collaboration Agreement may be found in Nuwellis' Current Report on Form 8-K, to be filed with the Securities and Exchange Commission later today.

About Nuwellis

Nuwellis, Inc. (Nasdaq: NUWE) is a medical technology company dedicated to transforming the lives of patients suffering from fluid overload through science, collaboration, and innovation. The company is focused on commercializing the Aquadex SmartFlow® system for ultrafiltration therapy. Nuwellis is headquartered in Minneapolis, Minnesota, with a wholly owned subsidiary in Ireland. For more information visit www.nuwellis.com or visit us on LinkedIn and Twitter.

About the Aquadex SmartFlow System

The Aquadex SmartFlow system delivers clinically proven therapy using a simple, flexible, and smart method of removing excess fluid from patients suffering from hypervolemia (fluid overload). The Aquadex SmartFlow system is indicated for temporary (up to 8 hours) or extended (longer than 8 hours in patients who require hospitalization) use in adult and pediatric patients weighing 20 kg or more whose fluid overload is unresponsive to medical management, including diuretics. All treatments must be administered by a health care provider, within an outpatient or inpatient clinical setting, under physician prescription, both having received training in extracorporeal therapies.

Forward-Looking Statements

Certain statements in this release may be considered forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including without limitation, statements regarding the new market opportunities and anticipated growth in 2023 and beyond. Forward-looking statements are predictions, projections and other statements about future events that are based on current expectations and assumptions and, as a result, are subject to risks and uncertainties. Many factors could cause actual future events to differ materially from the forward-looking statements in this release, including, without limitation, those risks associated with our ability to execute on our commercialization strategy, the impact of the COVID-19 pandemic, the possibility that we may be unable to raise sufficient funds necessary for our anticipated operations, our post-market clinical data collection activities, benefits of our products to patients, our expectations with respect to product development and commercialization efforts, our ability to increase market and physician acceptance of our products, potentially competitive product offerings, intellectual property protection, our ability to integrate acquired businesses, our expectations regarding anticipated synergies with and benefits from acquired businesses, and other risks and uncertainties described in our filings with the SEC. Forward-looking statements speak only as of the date when made. Nuwellis does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

CONTACTS

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