

## Zimmer Biomet Product Purchase Terms

Unless otherwise agreed in writing, the following terms and conditions apply to Customer's purchases of Zimmer Biomet ("**Vendor**") Products within the United States

Additional terms and conditions apply to equipment and biologic products.

### Zimmer Biomet PPA Terms and Conditions

1. **F.O.B. Destination.** Unless otherwise agreed in writing by the Parties, Products will be delivered F.O.B. destination. Pricing does not include freight charges, taxes or storage fees. Freight will be prepaid by Vendor and added to the invoice as a charge to be paid by Customer. Title and risk of loss for Products, other than consigned products, shall transfer to Customer upon delivery.

Vendor's representative will submit delivery documents for implant cases to Customer's purchasing department within twenty-four (24) hours after surgery, and Customer will submit a purchase order within forty-eight (48) hours after receipt of the delivery documents for the implant case.

2. **Pricing.** The product categories (the "**Products**") covered by this Zimmer Biomet PPA. These prices account for discounts off of Vendor's current price list and reflect a discount for payment in immediately available funds, check or electronic funds transfer. In fulfilling the terms and conditions, Vendor shall not pay costs, fees, or other charges, not included in a signed agreement. If pricing is based on a percent off list, the pricing will be modified annually when the list price changes.

3 Intentionally omitted.

4. **Consigned Products.** In the event that Products, instruments, or equipment are held with Customer the Vendor Consignment Terms and Conditions shall apply, subject to any subsequent written consignment agreement executed by the Parties specific to particular Products.

5. **Returns on Purchased Products.** Unless otherwise specified in Vendor's materials pertaining to a particular Product or as specified below, Customer may return Products sold (except Non-Returnable Products) for full credit within thirty (30) days of purchase. Products must be returned to a Vendor sales associate or the Vendor manufacturing site, shipping prepaid, at Vendor's discretion. Products must always be accompanied by one of the following: (a) copy of the invoice with the reason for the return in writing; or (b) reason for the return in writing, indicating the invoice number and date of purchase. In order to receive full credit for a return, the Product must be received by Vendor in the original, unopened and undamaged shelf package. For Products returned after thirty (30) days of Customer receipt, but before one hundred fifty (150) days of Customer receipt, a minimum twenty percent (20%) handling and restocking fee may be charged. Additional fees may be assessed for repackaging and/or re-sterilization. No credit will be given for returned sterile packaged Products unless the Product is returned in the original, unopened and undamaged shelf package. All returned Products are subject to quality assurance inspection by Vendor, which inspection will determine any credit due to Customer.

Notwithstanding the above, If upon inspection after delivery Customer or Vendor discovers a failure of a Product to conform to the Vendor documentation or a defect in material and workmanship, Customer must promptly notify Vendor in writing, and Vendor will correct any failure of the Product to conform to the documentation by providing, at Vendor's option, repair of the Product or a replacement unit. Products that are discontinued, damaged while in Customer's custody, patient-specific, custom made, comprised of human or animal-derived tissue, or biologically active such as bone graft substitutes, and Products returned after 150 days, are "**Non-Returnable Products**". Non-Returnable Products are not returnable for credit at any time.

**Human Tissue.** Upon shipment of any human tissue product to Customer, Customer is responsible for shipping, receiving, control, storing, handling and using (collectively all defined as "**Control**") of the tissue and Vendor fully disclaims any liability whatsoever. Additionally, Customer shall indemnify and hold Vendor, its agents, officers, trustees, employees and representatives harmless from and against all actions, claims, demands, damages, expenses, costs, fines, charges, liabilities, suits, fees (including attorneys' fees) and judgments whatsoever rising out of the Control of the tissue.



**CMF or Thoracic.** All requests to return CMF or Thoracic Products must be authorized by Vendor's customer service representative. Shipments must have a Return Goods Authorization (RGA) number clearly marked and displayed on each carton and returned on a freight-prepaid basis. Vendor recommends that the return shipment be insured for the protection of Customer. All returns must be made within ninety (90) days from date of invoice. Products returned after thirty (30) days will incur a twenty percent (20%) restocking fee. Products must be in original packaging, unused, and in saleable condition. Vendor reserves the right to charge twenty percent (20%) for the repackaging of any opened surgical instrument. The following types of merchandise cannot be accepted for return at any time: (a) custom made products; (b) special orders; (c) discontinued products; (d) engraved instruments; (e) implants and sterile products not in original unopened package; and (f) merchandise held longer than ninety (90) days.

**Equipment.** Unless the Equipment is defective, the Equipment is returnable with thirty (30) days. Products must be returned to a Vendor sales associate or the Vendor manufacturing site, shipping prepaid, at Vendor's discretion. Products must always be accompanied by one of the following: (a) copy of the invoice with the reason for the return in writing; or (b) reason for the return in writing, indicating the invoice number and date of purchase. In order to receive full credit for a return, the Product must be received by Vendor in undamaged condition.

6. **Cancelled Cases.** In the event a surgery is cancelled for which Customer ordered a Product from Vendor, Customer shall provide Vendor notice of such cancellation within twenty-four (24) hours of the scheduled surgery to avoid delivery of the Product, and if Customer fails to provide such notice, Customer shall bear responsibility for all shipping costs for such Product and the return policy above shall apply.

7. **Warranty.** Unless otherwise specified in Vendor's written materials pertaining to a particular Product, Vendor warrants to Customer that Products purchased conform to Vendor's published specifications ("**Specifications**") and are free from defects in workmanship and material at the time of shipment. If, upon inspection within a reasonable time after delivery and before implantation or use, Customer discovers a failure of a Product to conform to Specifications or a defect in material and workmanship, it must promptly notify Vendor in writing. Within a reasonable time after such notification, Vendor will correct any failure of the Product to conform to the warranty by providing, at its option, repair of the Product, a replacement unit, or a refund of the purchase price, if applicable. The aforementioned remedies are Customer's exclusive remedies for breach of warranty. The foregoing warranties, unless otherwise agreed by the Parties in a written agreement or expressly provided in the Specifications, shall extend for a period of one (1) year commencing on the date of shipment of the Product to Customer.

This warranty does not extend to or cover: (a) any product, components, or parts not manufactured or sold by Vendor; (b) damage caused by use of any Product for purposes other than those for which it was designed as indicated in Vendor's Specifications; (c) damage caused by unauthorized attachments or modification; (d) any other abuse or misuse by Customer, its employees, representatives, contractors and agents; or (e) any Vendor Product where the Customer receives the Product from a person or entity that is not affiliated with or authorized by Vendor.

And for **EQUIPMENT**: Different warranty provisions apply. Additionally, the warranty may be cancelled: (i) in a Force Majeure Event; (ii) if the Product has been moved to a different facility without VENDOR's prior knowledge; (iii) if Customer has outstanding invoices with VENDOR; (iv) if Customer misuses or abuses the Product; (v) if Customer's use of Product is non-conforming to VENDOR's Specifications; (vi) if Customer attempts any unauthorized repairs or modifications; or (vii) if Customer does not allow time-sensitive preventative or corrective maintenance.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PRODUCTS OR MATERIALS TO BE PROVIDED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

## Standard Terms and Conditions

**Purchase and Sale of Products.** Customer agrees not to resell Products to any non-affiliated third party, without the prior written consent of Vendor.

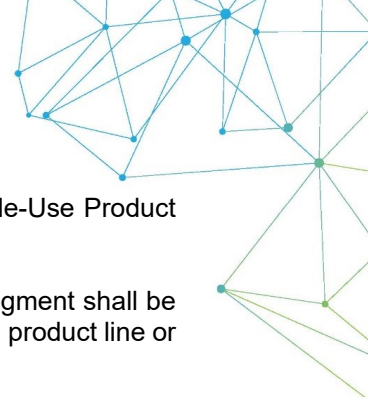
**Product Orders.** While Vendor will make its best effort to fill orders and meet specified delivery dates, if Vendor does not fulfill an order received from the Customer or deliver Products or Services to Customer by a specified delivery date, such act or non-act shall not constitute a breach by Vendor.

**Payment Terms and Invoicing.** Unless otherwise indicated in the Schedule, Vendor shall provide to Customer an invoice for each order placed and shipped/delivered/provided to the Customer. Customer shall remit full payment to Vendor within thirty (30) days from the invoice date. Late amounts may be subject to a late fee of 1.5% per month prorated (18% per annum), or the maximum interest rate allowable by law whichever is the highest. Additionally, Customer may be subject to a fee of fifty dollars (\$50.00) for any checks returned unpaid to Vendor for any reason. In the event expense is incurred to compel payment of the invoice or to declare any action or proceeding is commenced, Customer agrees to pay all costs and expenses associated with collection of unpaid sums, including but not limited to attorneys' fees and costs. Vendor, in its sole discretion, reserves the right to change terms of payment and/or discontinue further shipments, without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Customer's credit standing is received by Vendor. Should Customer elect to cancel its order, in whole or in part, Customer shall be liable to Vendor for reasonable cancellation charges that shall include but not be limited to all costs and expenses incurred by Vendor in connection with procuring and filling Customer's purchase order.

If any amount of an invoice is disputed by the Customer in good faith, Customer shall pay the undisputed invoice amount when due along with a written explanation specifying the amount in dispute. Upon resolution of the amount in dispute, any disputed amount that is determined to be due and owing to Vendor by the Customer shall be paid by the Customer to Vendor immediately upon such resolution. Customer must notify Vendor in writing of any dispute of an invoice; any such dispute is waived by Customer if such notice is not received by Vendor within thirty (30) days of the invoice date.

**New Products.** During the Term, Vendor may develop and offer additional products ("**New Products**") that are not listed as a Product in Standard Terms and Conditions. The Parties acknowledge and agree that Standard Terms and Conditions is not an exclusive list and Vendor may communicate New Products (and corresponding pricing) to Customer. In the event that Vendor determines that New Products are to be included, Vendor will notify Customer (by email or other writing) regarding the New Products and their prices and such New Products shall be deemed Products. If New Products are used by Customer without prior product and pricing approval, pricing for such items shall be the pricing for the nearest comparable (e.g., technical advances, features, primary versus revision, etc.) Product for which pricing has been agreed upon by Vendor and Customer. Vendor and Customer agree that pricing, under this methodology, shall be deemed agreed-upon, and incorporated into the pricing agreement, within thirty (30) days of Vendor's notice to Customer of the availability of a New Product.

**Single-Use Products.** Customer represents and warrants that units of Single-Use Product that it purchases shall be used once in delivering patient care. Vendor conveys no right in any patented Single-Use Product other than the right to use those units once. A "Single-Use Product" means any product that is labeled "For Single Use" or "Single Use Only" or "Do Not Reuse" or otherwise labeled to indicate that the Product is to be used once in delivering patient care. The Vendor does not grant the Customer or any other person or entity any license to reprocess, remanufacture, or reconstruct any patented Single-Use Product. In addition to other available



remedies, the sale or use of any reprocessed, remanufactured or reconstructed patented Single-Use Product will be subject to available remedies for patent infringement.

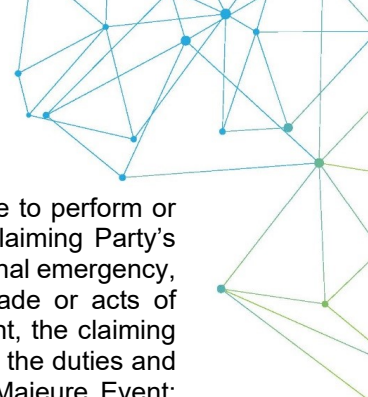
**Discontinued Products.** The decision to discontinue any Product, product line or business segment shall be in Vendor's sole discretion and shall not constitute a breach. Vendor may discontinue a Product, product line or business in its absolute discretion.

**Limitation of Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL THE LIABILITY OF VENDOR TO CUSTOMER FOR A GIVEN YEAR DURING THE TERM, ON ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE OR BREACH OF THIS AGREEMENT, EXCEED THE TOTAL PRICE OF PRODUCTS ORDERED BY CUSTOMER FOR SUCH YEAR AT THE TIME OF A CLAIM. FURTHERMORE, TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO CASE SHALL VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES.

**Mutual Indemnification.** Each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party (the "**Indemnified Party**") and its affiliates and their respective shareholders, directors, officers, employees, agents, and affiliates from and against any and all liabilities, damages, losses, penalties, fines, costs and expenses, including reasonable attorneys' fees, paid or incurred by them in connection with any third party action, suit, claim or proceeding (a "**Claim**") brought against the Indemnified Party based upon or arising from any negligent or more culpable act or omission of the Indemnifying Party or its affiliates or subcontractors or any of their respective employees or agents, including, for example, surgeons or sales representatives performing services at Customer, relating to the activities, Products, and equipment subject to or sold. To the extent that Vendor and Customer have indemnification obligations to one another in connection with a single Claim, Vendor and Customer shall contribute to the aggregate damages arising from such Claim in such proportion as is appropriate to reflect their relative responsibilities for such damages, as well as any other relevant equitable considerations. The amount paid or payable by Vendor or Customer for purposes of apportioning the aggregate damages shall be deemed to include all reasonable attorneys' fees and expenses incurred by such Party in connection with investigating, preparing for or defending against such Claim. Vendor will not be responsible and Customer agrees to indemnify, defend and hold Vendor, its officers, directors, parents, subsidiaries, affiliates, employees and agents harmless for any loss, injury or damage to any person or property as a result of: (a) any act or omission of Customer in the storage or use of a Product that does not comply with the terms outlined or the instructions of Vendor, (b) any material breach by Customer, or (c) any modification, abuse, misuse, loss, or damage of the Product while in Customer's possession or control.

**Insurance.** Vendor will maintain not less than the following insurance coverage, on an occurrence basis (or such higher coverage as may be required by law):

Commercial General Liability	\$1 million per occurrence / \$2 million annual aggregate
Automobile Liability	\$1 million combined single limit
Umbrella Liability	\$5 million
Worker's Compensation; Employer's Liability	Statutory Limits; \$1 million
Product Liability	Self-Insurance



**Force Majeure.** The obligations of either Party to perform shall be excused if a Party's failure to perform or delay in performance of its obligations or responsibilities is caused by matters beyond the claiming Party's control, which shall include, but not be limited to, acts of God, strikes or lockouts, embargo, national emergency, fire, flood, natural disaster, civil commotion, riots, wars, revolution, acts of terrorism, blockade or acts of government preventing performance (a "**Force Majeure Event**"). Upon a Force Majeure Event, the claiming Party shall notify the other Party in writing of the delay. Upon the occurrence of such an event, the duties and obligations of the Parties shall be suspended without liability for the duration of the Force Majeure Event; provided, however, that if such suspension shall continue in excess of ninety (90) days, the Parties shall attempt to arrive at a mutually acceptable compromise. If the Parties are unable to reach a compromise, then this Agreement may be immediately terminated upon written notice by the non-affected Party.

**Default and Termination.** A Party may terminate this agreement or any schedule to this agreement in accordance with the following events: (a) due to a breach by the other Party, if the breaching Party does not cure such breach within thirty (30) days after receipt of notice specifying the nature of the breach; (b) due to a Force Majeure Event; (c) the other Party becomes insolvent or bankrupt, or becomes the subject of any proceedings under state, federal or foreign law for the relief of debtors, or makes any assignment for the benefit of creditors; or (d) by Customer, due to discontinuation of Products. Termination shall not relieve any Party of any obligations that are expressly indicated to survive termination and shall be without prejudice to any rights that shall have accrued to the benefit of any Party prior to such termination.

**Records & Disclosure of Discounts.** Pursuant to the requirements of 42 CFR 420.300 et seq., Vendor agrees to make available to the Secretary of Health and Human Services ("HHS"), the Comptroller General of the Government Accounting Office ("GAO") or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of costs hereunder for a period of four (4) years after the furnishing of Products hereunder for any and all Products furnished under this Agreement. In addition, Vendor hereby agrees to require by contract that each subcontractor makes available to the HHS and GAO, or their authorized representative, all contracts, books, documents and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of services thereunder.

If Vendor carries out the duties of this Agreement through a subcontract worth \$10,000 or more over a twelve-month period with a related organization, the subcontract will also contain clauses sufficient to permit access by Customer, the Secretary, the United States Comptroller and their representatives to the related organization's books and records.

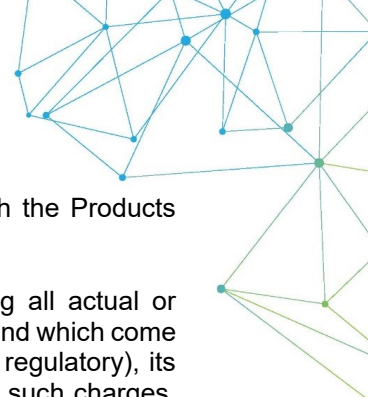
If applicable, Vendor will provide Customer with invoices or other documents that fully and accurately disclose the discounted price of all Products purchased under this Agreement. If Customer is an institution required to file Medicare/Medicaid cost reports with federal or state agencies for payment, Customer acknowledges that Customer has an obligation under federal law to fully and accurately report all discounts received in its cost reports. (Public Law 100-93, the "Medicare and Medicaid Patient and Program Protection Act of 1987"; 42 CFR part 1001).

Each Party represents and warrants that it has not made, is not obligated to make, and will not make any payment or provide any remuneration to any third party in return for Customer entering into this Agreement or for any business transacted under this Agreement.

Rights under this Section shall survive for a period of four (4) years after termination or expiration of this Agreement.

**Compliance with Applicable Laws.** The Parties agree that each of them shall abide by all applicable state and federal laws relating to the activities, Products, and equipment subject to or sold, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its implementing regulations (45 C.F.R. Parts 160-164), as may be modified or amended from time to time, for the protection of Protected





Health Information (as defined in 45 C.F.R. §160.103) if used or disclosed in connection with the Products provided under this Agreement.

**Regulatory Matters.** Customer shall immediately forward to Vendor information concerning all actual or threatened charges, complaints or claims of any nature, which relate in any way to the Products and which come to Customer's attention. Customer shall cooperate with Vendor, its representatives (including regulatory), its legal counsel, its insurance carriers and their legal counsel in investigating and defending any such charges, complaints or claims. Customer and its employees shall, at Vendor's request, provide Vendor with reasonable assistance in gathering information concerning such charges, complaints or claims and in giving oral or written testimony as to all facts in their possession concerning such charges, complaints or claims.

**Warranty of Eligibility.** Each Party represents and warrants to the other Party that the Party, its officers, directors and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs") and (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services which could result in becoming been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement and each Party shall immediately notify the other Party of any change in the status of the representations and warranty set forth in this Section. Any breach of this Section or exclusion of such Party from participation in any Federal Healthcare Program shall give the other Party the right to terminate this Agreement immediately for cause. Customer further represents, warrants and covenants to Vendor that (i) each User has all necessary rights and authority to access, use and disclose PHI as contemplated by this Agreement in compliance with all applicable laws, including the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 and the implementing regulations of each; and (ii) Customer will immediately notify Vendor if any User ceases to meet the qualifications set forth herein.

**Corporate Compliance.** The Parties hereby certify that this Agreement is not intended to violate the Anti-Kickback Statute, 42 U.S.C. 1320(a)-7b(b) or any other applicable law or regulation. Vendor has referenced and made available to Customer a copy of its Code of Business Conduct and a summary of Vendor's Anti-Kickback Statute policies and procedures on Vendor's website ([www.zimmerbiomet.com](http://www.zimmerbiomet.com)).

**EEO Affirmation.** Unless this Agreement is exempt from compliance with applicable law, Vendor shall comply with the EEO Clause in Section 202 of Executive Order 11246, as amended, 41 CFR Part 60-250 and 41 CFR Part 60-741, as amended, which are incorporated herein by specific reference.

**Transparency Reporting.** The Parties acknowledge that certain state or federal laws now or in the future may require disclosure of information on compensation, gifts or other remuneration provided to physicians and other health care professionals. Vendor shall have the sole and absolute discretion for making the determination whether to report remuneration provided under this Agreement pursuant to such laws. Customer agrees to promptly provide Vendor with such information Vendor requests to comply with such reports and in an accurate, whole and timely manner complete any all documents required by Zimmer Biomet or any state or federal agency in connection with such reports. Once reported, such information may be publicly accessible. Notwithstanding any other provision in this Agreement, Customer understands and agrees that Vendor reserves the right to post on a website accessible to the public. Customer covenants and warrants not to bring any action, in law, equity, arbitration, or otherwise, against Vendor and/or any other affiliated company, and/or any of its respective directors, officers, or employees as a result of said disclosure, reporting or posting. Customer further releases Vendor and/or any of its affiliated companies, and/or any of its respective directors, officers, or employees for any claims, damages and expenses or any liability of any kind arising from or alleged to arise from such disclosure, reporting or posting. Customer covenants and warrants to Vendor that to the extent required by law and/or Customer's policies or bylaws, Customer will disclose this engagement with Zimmer Biomet to each of its patients and affiliated hospitals as applicable. Customer further represents that it has received any necessary



approvals or authorizations from the appropriate national, regional or local authorities (if any), as may be required to perform the Services in accordance with this Agreement.

**Compliance with Law/ FCPA/ Off-Label Promotion.** In addition to the specific provisions elsewhere in this Agreement, Customer shall comply with all laws applicable to the services in any jurisdiction in which Customer performs any of the services, including without limitation any restrictions on the activities of medical professionals not licensed in such jurisdictions. Customer further acknowledges that Customer is aware of and shall comply with the provisions of the Foreign Corrupt Practices Act, 15 USC §78dd-1 thru 3, as amended, and any laws of any jurisdiction relating to commercial bribery. By way of example and not limitation, except as permitted by law, Customer shall not offer, pay, or promise to pay, any money or thing of value, directly or indirectly, to any person who is a government official for the purpose of obtaining or retaining any business. For these purposes “government official” shall include any employee of any governmental entity, political party, or public international organization, any political party official, or any candidate for public office in any jurisdiction. Customer further represents and warrants that neither Customer nor any of Customer’s staff or employees will promote Vendor or its affiliates’ products for any purposes for which the products are not indicated or approved by appropriate governmental or regulatory authorities.

**Confidentiality.** Unless otherwise indicated, each Party shall keep confidential and secret any and all Confidential Information disclosed to it by the other Party. “Confidential Information” shall include, but not be limited to, the terms of and pricing under these Standard Terms and Conditions, trade secrets, know-how, proprietary information, any source code to any Software licensed under these Standard Terms and Conditions, formulae, processes, techniques, product designs and marketing activities that may be disclosed, whether orally or in writing, to a Party and/or a Party’s parent, subsidiary or affiliate companies, or that may be otherwise received or accessed by a Party in the course of performing these Standard Terms and Conditions.

To the extent applicable, Confidential Information does not include Log Information, information collected or received by Vendor for the purpose of reporting adverse events, monitoring product complaints and conducting post-market surveillance (“Adverse Event Data”) or Protected Health Information (as defined in an applicable Business Associate Addendum). Protected Health Information created, received, maintained or transmitted by Vendor in the performance of the maintenance and troubleshooting services shall be subject to the Business Associate Agreement that is entered into between the Parties. The Parties shall be bound by and comply with all applicable federal, state and local statutes and regulations governing the confidentiality of patient records, employee records and other personally identifiable information, including, but not limited to, State Labor Law (pertaining to employee information) and Business Law (pertaining to social security numbers).

The Parties expressly agree that each Party shall (i) use such Confidential Information solely and exclusively in connection with the discharge of its obligations under these Standard Terms and Conditions and (ii) not disclose such Confidential Information to any other person without the disclosing Party’s prior written consent. The Parties’ obligation not to disclose Confidential Information to third parties and otherwise not to use Confidential Information shall survive the termination of these Standard Terms and Conditions. The Parties acknowledge that, in the event of a breach of the provisions of this Section, the non-breaching Party shall suffer damages that are not easily determinable, and the non-breaching Party shall be entitled to seek equitable relief, including, without limitation, an injunction or an order for specific performance, in addition to all other remedies available to the Parties at law or in equity.

Notwithstanding the foregoing, Confidential Information shall not include information which (i) is, at the time disclosed, known or thereafter becomes known or available to the general public through no act or omission which is in violation of either Party’s obligations under these Standard Terms and Conditions; (ii) was in the receiving Party’s lawful possession prior to such access to or the disclosure of the same and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party;

(iii) is disclosed to either Party by a third party having the right to make such disclosure; or (iv) is independently developed by either Party without reference to Confidential Information.

**Disclosure of this Agreement.** The provisions of this Agreement shall be considered proprietary, confidential information owned by the Parties hereto and shall not be disclosed to anyone, except (i) as may be otherwise specified herein; (ii) to such employees of the Parties hereto, affiliates, and employees of such affiliates, having a need to know in order to carry out the terms and conditions of this Agreement; (iii) to executive management of each of the Parties; (iv) to attorneys, accountants and auditors of each of the Parties; (v) if necessary in the reasonable opinion of each respective Party, to its Board of Directors; and (vi) in connection with any litigation between the Parties hereto or as a result of any legal process or requirement of law, rule or regulation. Customer shall be allowed to share this Agreement and any attachments with any consultant or independent contractor engaged by Customer in connection with its business operations that are bound by an agreement or legal obligation of confidentiality.

Notwithstanding the foregoing, if either Party is legally obligated to disclose any Confidential Information received pursuant to this Agreement in order to comply with any applicable federal, state or local law, or pursuant to an order of a court of competent jurisdiction, such Party shall, unless legally prohibited, promptly notify the disclosing Party prior to any such disclosure, to enable the disclosing Party to protect the Confidential Information. In such event, the receiving Party shall only disclose such portion of the Confidential Information that it is legally required to disclose.

**Use of Names; Publicity.** The Parties shall not use the names of the other Party or any adaptation, abbreviation or likeness thereof, or any trademark, trade name, trade style or registered design that is the property of or currently in use by the other Party, on any web site or in any printed materials, publicity, advertising, or for trade or other commercial purposes (including without limitation in Vendor's client/customer lists) without the prior written consent of the other Party as to form, content and context, which consent may be refused for any reason and revoked at any time upon five (5) business days' notice.

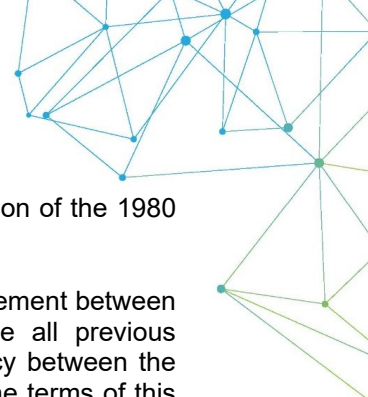
**Vendor Product Recall Policy.** Vendor is committed to providing products that are defect-free and conform to Vendor Specifications. Providing quality products to customers is Vendor obligation and top priority. Should Vendor discover any situation with distributed product whose continued use or exposure could result in a risk to health for the patient or the health care professional, Vendor adheres to the requirements set forth by 21 CFR Part 806, Medical Devices; Reports or Corrections and Removals.

**Assignment.** Neither Party may assign its rights and obligations under this Agreement to any third party without the express prior written consent of the other Party; provided, however, that Vendor may assign all or any part of its rights and obligations hereunder without the need for Customer's consent to any affiliate of Vendor or, in the event of a merger, acquisition, change of control, reorganization or sale of substantially all of Vendor's assets, to Vendor's successor.

**Notices.** All notices and other communications in connection with this Agreement shall be in writing and shall be sent to the respective Parties at the addresses set forth below each Party's signature, or to such other addresses as may be designated by the Parties in writing from time to time in accordance with this Section, by hand, by registered or certified mail, postage prepaid, or by express courier service, service fee prepaid, in accordance with this Section. All notices shall be deemed given and received (i) if delivered by hand, immediately, (ii) if sent by mail, three (3) business days after posting, or (iii) if delivered by express courier service, the next business day in the jurisdiction of the recipient.

**Choice of Law.** This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Indiana, without regard to the choice of laws principles thereof. The Parties agree that any legal action relating to this Agreement shall be commenced and maintained exclusively before any appropriate state court of record in Kosciusko County, Indiana, or, if necessary, the United States District Court for the Northern District of Indiana, and the Parties hereby submit to the jurisdiction of such courts and waive any right to challenge or otherwise raise questions of personal jurisdiction or venue in





any action commenced or maintained in such courts. The Parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

**Entire Agreement.** This Agreement and the Schedules and Exhibits constitute the entire agreement between the Parties with respect to the Products and Services referenced herein, and supersede all previous negotiations, agreements, and commitments with respect thereto. If there is any inconsistency between the terms of this Agreement and the terms of any order or other documentation from Customer, the terms of this Agreement shall prevail. If there is any inconsistency between the terms of this Agreement and the Schedules and/or Exhibits, the terms of the Schedules, then this Agreement, and finally the Exhibits shall prevail. Each Party hereby acknowledges and agrees that each (a) has read this Agreement in its entirety prior to executing it, (b) understands the provisions and effects of this Agreement, and (c) has consulted with such advisors as it has deemed appropriate in connection with its respective execution of the Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties respective rights and obligations under the following provisions shall remain in full force and effect following expiration or termination of this Agreement and shall be enforceable following such expiration or termination: any applicable termination payment/ damages obligations set forth in the Agreement; payment terms and obligations; Confidentiality; Limitation of Liability; Indemnification; Compliance with Applicable Laws; and Regulatory Matters.

**Independent Contractors.** The Parties to this Agreement are independent contractors and nothing contained in this Agreement shall be construed to place the Parties in the relationship of employer and employee, partners, principal and agent, or joint ventures. Neither Party shall have the power to bind or obligate the other Party nor shall either Party hold itself out as having such authority.

**Separate Entities.** Customer acknowledges that each of Zimmer US, Inc. and Biomet Microfixation, LLC dba Zimmer Biomet CMF and Thoracic (each, an "Affiliate") is a separate entity and shall only be responsible to supply and invoice for the products provided by such Affiliate. Under no circumstances shall any Affiliate be responsible for obligations with respect to any products provided by the other Affiliate. Under no circumstances will any breach or other basis for termination by one Affiliate be chargeable to the other Affiliate. Each billing shall clearly indicate which Affiliate provided which products.

**Training.** As customarily provided, Vendor shall provide training on the safe and effective use of the Products, without additional charge to Customer.

**Waiver, Illegality, and Written Amendment.** This Agreement and any rights hereunder shall not be waived, released, abandoned, discharged, changed or modified in any manner except by an instrument in writing signed by each of the Parties. The failure of a Party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provision, nor affect the validity of this Agreement or such provision, nor limit the right of the Party thereafter to enforce this Agreement or such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. The illegality or partial illegality of any provision of this Agreement shall not affect the validity of this Agreement or any other provision of this Agreement.

**Counterparts.** This Agreement may be executed in the original or electronically in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement. This Agreement has been prepared jointly and shall not be strictly construed against either Party.

## Zimmer Biomet PPA Consignment Agreement

Consignment Terms and Conditions apply to all Parties listed herein and to Consigned Products as defined hereafter.

“Consigned Products” are Vendor’s products located on the Customer’s premises and include but are not necessarily limited to the following:

- (1) Long Term Loan Products, which are stocked at certain levels, replaced automatically to maintain such levels, and listed on Exhibit A to the Consignment Terms and Conditions or otherwise agreed on by the Parties;
- (2) Short Term Loan Products, which are products that are provided on an as-needed or Just-In-Time (JIT) basis;
- (3) instruments (Long Term and Short Term loaned but not replenished);
- (4) any other Vendor products that are located on the Customer’s premises, including, but not limited to products referred to as “provided”, “parked”, “long term loan”, “short term loan”, “replacement” “permanent”, “trunk stock” or “temporary”.

All capitalized terms used, but not otherwise defined, shall have the definitions given to them in the Zimmer Biomet PPA (the “**Agreement**”).

<b>Exhibit to Consignment Terms and Conditions</b>
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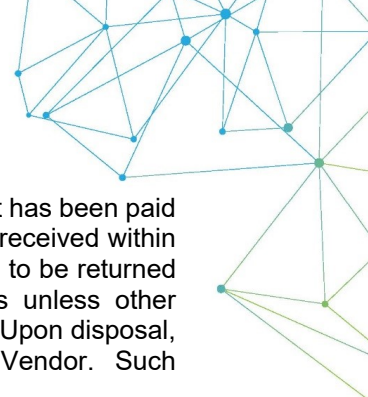
Exhibit A to Consignment Terms and Conditions – Long Term Loan Products

<b>Consignment Terms and Conditions</b>
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**1. Title and Risk of Loss.** Vendor will own all Consigned Products until Consumption. Customer shall be responsible for the correct handling and storing of the Products and shall take reasonable steps to identify all Consigned Products held at its facility as consigned goods. Customer shall clearly and conspicuously label the storage area of the Consigned Products to indicate that the Consigned Products are the property of Vendor, and shall segregate the Consigned Product from other goods.

Customer agrees that it shall be solely responsible for all losses resulting from damage to, contamination of, or destruction of the Consigned Products from the time of receipt until Consumption or removal by Vendor. Customer shall use reasonable care in the handling and storage of Consigned Products, and shall store any of such Products in a secure and sanitary manner so as to mitigate all risk of damage and contamination and otherwise in accordance with Vendor’s specifications and applicable quality standards or regulations related to such products (including, without limitation, storing under controlled temperature and humidity conditions and maintaining proper temperature and humidity logs). Customer expressly accepts all risk of loss for any Consigned Products which are missing or damaged while in Customer possession, except that damage to instrumentation caused by reasonable wear and tear shall be the responsibility of Vendor. Lost, damaged or missing products shall be invoiced to Customer at the price indicated in the Agreement, and if not included on an agreement, at the then-current list price.

In the event Consigned Products sustain damage or contamination while in the custody of Customer, Customer agrees to do the following: (1) Customer shall report to Vendor at [damaged.consignment@zimmerbiomet.com](mailto:damaged.consignment@zimmerbiomet.com) and its sales representative in writing any damage or contamination event promptly and in all cases within 48 hours of the event, including item number, description, lot number, quantity, and pictures or video of the damage or contamination event and the date and description of the event; (2) Customer agrees to promptly inform its insurer of the damage or contamination event so as to begin the insurance claims process; (3) damaged product



should be quarantined at Customer's premises under lock and key until such time as the product has been paid for by the Customer; (4) payment for damaged Consigned Products at contract prices must be received within a reasonable time frame, not to exceed ninety (90) days; (5) damaged Consigned Products are to be returned to Vendor for destruction within a reasonable time frame, not to exceed ninety (90) days unless other arrangements have been made in writing to destroy product in accordance with applicable law. Upon disposal, Customer agrees to provide any and all documentation reasonable requested or required by Vendor. Such documentation, at a minimum, shall include part and lot numbers.

Vendor is not responsible for damaged product(s) while in the custody of Customer.

2. **Audit.** Customer will maintain adequate records to allow Zimmer Biomet to determine the use of the Long Term Loan and Instrument Products held at Customer's facility. Vendor reserves the right to, during regular business hours, physically audit the Long Term Loan and Instrument Products held at Customer's facility, to examine the records related to the Long Term Loan and Instrument Products, including, without limitation, all tracking and temperature logs to ensure compliance with product requirements, and any damaged, recalled or expired Long Term Loan and Instrument Products. In the event that Vendor's audit of such Long Term Loan and Instrument Products concludes that either a shortfall or surplus exists, Vendor and Customer agree to use commercially reasonable efforts to timely account for any such discrepancy.

Vendor's right to conduct any audit as set forth in this section does not create any duty to conduct any such audit, and neither Customer nor any other party shall contend that Vendor's right to audit Customer's supply in any way represents an obligation to do so. By conducting a physical audit or examination pursuant to this Section, Vendor shall not assume any liability for violations of applicable law that Vendor fails to discover, nor shall Vendor assume any obligation to remedy violations of applicable law that Vendor discovers in such physical audit or examination. Customer agrees it will be solely liable for any violations of such applicable law.

3. **Variation in Products Levels.** Vendor may add or remove Consigned Products on a short term or long term basis as required to cover caseloads. If such products are Long Term Loan or Instrument Products, an updated list will be provided to Customer for review and signature, which will not be unreasonably withheld, and will serve as an amended Exhibit A when executed.

4. **Consumption.** Upon usage of any Consigned Product by Customer ("**Consumption**"), Customer will issue to Vendor a purchase order for the Consigned Product consumed (the "**Purchase Order**") no later than twenty-four (24) hours following Consumption. Such Purchase Order must identify the catalog number, batch (lot) number, description, quantity, and size of the Consigned Product consumed. Upon receipt of the Purchase Order, Vendor shall submit an invoice to Customer for the Consigned Product. Such Purchase Order will also serve as notice for Vendor to ship a replacement for any Long Term Loan Product. Customer agrees to make payment to Vendor consistent with the terms contained in the Agreement.

5. **Shipping.** Vendor will provide a record of shipments including the number of Consigned Products. Customer shall inspect received Consignment Products within one business day of receipt and shall verify the count and quality of shipments and within three (3) business days of receipt shall advise Vendor in writing of any count discrepancies or quality problems. Customer shall retain any rejected Consigned Products at Customer's facility for not less than ninety (90) days to allow an opportunity for inspection by Vendor. The Parties shall use good faith efforts to agree as to the cause and responsibility for any Consigned Products rejected by Customer. Shipping costs shall be paid in accordance with the terms of the Agreement.

6. **Credit Terms.** Shipments and deliveries of Consigned Products at Customer's facility shall at all times be subject to the approval of Vendor's credit department; and in the event Customer is past due in payment of any amount owing to Vendor, Vendor may, without liability and without prejudice to any other remedies, decline to make shipments or deliveries or stop any shipments in transit under the Agreement or any other contract with Customer.



7. **Recalled Products.** In the event of a recall, Customer shall fully cooperate with Vendor to provide access to the Consigned Products as well as any information related to the tracking and inventory of the Consigned Products.

8. **Expired Products and Returns.** Unless otherwise agreed in writing, all returns of products supplied hereunder shall be coordinated with the local Vendor sales representative. Customer shall be responsible for removing expired Long Term Loan Products from its inventory and documenting such removal. Within one business day of such removal, Customer shall contact Vendor to request replacement Long Term Loan Products. Vendor, at its option, may either ship such replacement products or reduce the inventory of Long Term Loan Products maintained by Customer. Vendor will not charge Customer for products sent to replace expired inventory, unless specific replacement costs apply and are provided in writing.

Vendor shall under no circumstances be held responsible for Customer's use of any expired Consigned Product in any case, and Customer shall hold harmless and indemnify Vendor for any and all damages arising from any such use of expired Consigned Products in any case, as such use is expressly contrary to this Agreement.

9. **No Third-Party Sale or Pledge of Consigned Products.** Customer shall not sell any Consigned Products for use by a third party, use the Consigned Products as collateral or security, or mortgage or otherwise encumber the Consigned Products in any way. Customer shall execute and deliver, or cause to be executed and delivered, such documents as Vendor may request (i) in connection with these Vendor Consignment Terms and Conditions and Vendor's rights in the Consigned Products and the proceeds therefrom, and (ii) to protect and maintain the protection of Vendor's rights in the Consigned Products and proceeds therefrom, including without limitation, executing and filing financing and other similar statements as may be required to protect Vendor's ownership in any applicable jurisdiction; and Customer hereby authorizes Vendor to sign and file any such statement without its signature.

10. **Taxes and Insurance.** Customer agrees that, as applicable, it shall be responsible for payment of all taxes and other expenses incidental to the possession, safekeeping and use of the Consigned Products supplied hereunder and to waive all claims against Vendor for such expenses.

Customer shall, at its own expense, maintain for the benefit of Vendor appropriate levels of insurance with financially sound insurers to cover the full purchase price of all Consigned Products which are stored on Customer premises. By declining to obtain commercial insurance, Customer is expressly representing to Vendor that it is self-insured at a level sufficient to compensate Vendor for the full contract price of all Consigned Product in the event of damage or other loss. Upon Vendor's request or before Consigned Product is delivered to Customer, Customer shall provide Vendor with a certificate of insurance naming Vendor as an additional insured on all applicable policies. Customer shall provide thirty (30) days' written notice of any cancellation or material change in insurance. Notwithstanding any insurance coverage or any insurance limitations or exclusions, Customer shall at all times be liable for the full contract price of lost or damaged Consigned Products

11. **Effect of Termination and Modification.** Either Party may terminate the consignment arrangement of any Consigned Products at Customer's facilities upon ninety (90) days prior written notice to the other Party. Within one (1) day of termination or expiration of the Agreement in accordance with its terms, Customer shall notify Vendor of its intention to either (i) purchase all Consigned Products in its possession or (ii) return the Consigned Products in its possession by coordinating with the local Vendor sales representative, and Customer shall be responsible for removing the Products from its inventory and documenting such removal. In the event that the Agreement is terminated by Vendor for Customer's breach, Vendor will be entitled to require that Customer return all Consigned Products in its possession by coordinating with the local Vendor sales representative.

12. **Minimum Usage.** Unless otherwise agreed in writing, Vendor shall have the right to terminate Customer's right to receive Consigned Products under the Agreement, or retrieve the Consigned Products from the Customer if the total usage by Customer does not reasonably support a business need for consignment or does not demonstrate a consistent usage where consignment is justified.