

# mymobility End User License Agreement

Effective Date: January 1, 2020

This mymobility End User License Agreement, including any policies, rules and other documents that are expressly incorporated herein by reference (collectively, this **Agreement**) sets forth a legally binding agreement between you and Zimmer Biomet, together with its affiliates (**Company, we, or us**). This Agreement governs your access to and use of the mymobility mobile physical therapy application (the **Application**) and any Company websites, software, products, and services that link to this Agreement, including the website located at [www.zbmymobility.com](http://www.zbmymobility.com) (the **Site**), and any content, functionality, products, and services offered on or through the Application and/or Site (collectively, the **Services**), whether as a guest or a registered user. Please read this Agreement carefully before accessing or using the Application, the Site, or any Services. We may have entered into an agreement (a **Provider Agreement**) with your healthcare providers (each, a **Provider**) to provide you with access and use of the Application. If you do not agree to the terms contained in this Agreement, then you may not use the Site, Application or any Services.

Your use of the SERVICES constitutes your acknowledgement and agreement that you have the legal authority to bind yourself or any party you represent to, and your acceptance of, this Agreement. By using the SERVICES, You: (A) acknowledge that you have read and understand this Agreement; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; (C) accept this Agreement and agree that you are legally bound by the terms AND CONDITIONS of this Agreement; and (D) shall comply with all applicable laws, regulations and/or rules with regard to your use of the SERVICES. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICES AND DELETE THE APPLICATION FROM YOUR DEVICE.

**Please note: This Agreement contains a binding class action waiver under the heading titled “General Information” below. It affects how disputes are resolved. Please read it carefully.**

Additional terms may apply to you if you create or have created a Company account on or through the Site, or use other Company services. To review these terms, visit <https://www.zimmerbiomet.com/legal-notice.html.html>. In addition to the terms set forth in this Agreement, your use of certain Services may require you to accept additional terms applicable to such Services. When using particular Services, you shall be subject to any rules or policies applicable to

such Services that may be posted or made available to you through the Services from time to time.

From time to time we may change, modify, update or supplement this Agreement. We will notify you of any such updates by posting a new version of this Agreement and revising the Effective Date shown at the top of this Agreement. Your use of the Services after we post any changes to this Agreement constitutes your agreement to those changes. All changes are effective immediately when we post them or make them available to you, and such changes shall apply to all access to and use of the Services thereafter. You agree to review this Agreement periodically to ensure that you are familiar with the most

recent version. Company may, in its sole discretion, and at any time, discontinue the Services or any part thereof, with or without notice, or may prevent your access to or use of the Services with or without notice to you. You agree that you do not have any rights in the Services and Company will have no liability to you if the Services (in whole or in part) are discontinued or your ability to access or use the Services is suspended or terminated.

The Application should only be accessed and used under a prescription issued by your Provider.

The Application is not intended to diagnose any medical condition or to replace information or guidance from your healthcare professional. Please consult with your healthcare professional prior to use or if you have any questions during use. The Application does not make a medical assessment of your ability to participate in any program provided by or associated with the Application. The Application does not monitor your condition during any workout. You are responsible for participating in any program and/or using the Application within your limits, seeking advice from a personal physician regarding any concerns about participating in a program through the Application, and seeking immediate medical attention if and when necessary. You shall be solely responsible for all uses, medical and business judgments made and for care provided using the information provided through the Application. You acknowledge that the information provided through the Application in no way is intended to replace or substitute for professional or business judgment. By participating in any program through the Application, you agree that you undertake all risks associated with your participation in such a program and accept full responsibility for your own health and safety.

YOU MAY NOT USE THE services FOR ANY PURPOSE THAT IS UNLAWFUL OR PROHIBITED BY THIS AGREEMENT OR OTHERWISE RESTRICTED BY, OR CONTRARY TO THE INSTRUCTIONS OF, YOUR PROVIDER. YOUR ACCESS TO THE services MAY BE TERMINATED IMMEDIATELY IN COMPANY'S SOLE DISCRETION, WITH OR WITHOUT NOTICE, IF YOU FAIL TO COMPLY WITH ANY TERMS OR PROVISIONS OF THIS AGREEMENT AND/OR ANY ADDITIONAL TERMS, OR FOR ANY OTHER REASON, OR NO REASON.

## Grant of License to Application

The Application, including the embedded software (including, without limitation, software, code, files, and images, contained in or generated by the software, accompanying data, Boot ROM code and other embedded software), Application Updates (as defined below), documentation and any accompanying fonts, whether in read-only memory, on any other media or in any other form are licensed to you by Company subject to the terms of this Agreement. Neither title nor any intellectual property rights are transferred to you, but rather remain with Company or its respective licensors, who own full and complete title, and Company reserves all rights not expressly granted to you under this Agreement. No right or license to such intellectual property

and complete use, and Company reserves all rights not expressly granted to you under this Agreement. No right or license to such intellectual property rights shall be deemed transferred or granted to you by implication, estoppel or otherwise, except as may be expressly set forth in this Agreement. The rights granted herein are non-transferable, non-exclusive, non-sublicensable, revocable and are limited to Company's intellectual property rights in the Application and do not include any other patents or intellectual property rights. This Agreement grants you permission to use the Application on those devices that you own or control and that identify, as the device's primary account, the account used to download the Application (each, a **Device**).

Depending on the operating system of your Device, additional restrictions may apply. You may not make the Application available over a network where it could be used on multiple devices at the same time. This Agreement does not grant you any rights to use Company proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories for use with the Application. Any use of the Application in any manner not allowed under this Agreement or the LAEULA (as defined below), including, without limitation, resale, transfer, modification or distribution of the Application or copying or distribution of text, pictures, music, video, data, hyperlinks, displays and other content provided by the Application is prohibited. You shall not access, use, modify, exploit or disclose the Application or Content for any purpose or in any manner that is inconsistent with the terms of this Agreement. This Agreement does not entitle you to receive and does not obligate Company to provide hard copy documentation, support, telephone assistance, or enhancements or updates to the Application. You may not modify, alter, copy, reproduce, republish, publicly display or perform, distribute, transmit, or create derivative works, of the Application, except to the extent specifically permitted in this Agreement. This Agreement is effective until terminated.

Your rights under this Agreement will terminate automatically without notice from Company if you fail to comply with any term(s) of this Agreement or if the applicable Provider Agreement expires or terminates. Upon the termination of this Agreement, you shall cease all use of the Application.

## Users of the Apple Application

If you download and/or use our iPhone or iPad Application: You, the end-user of the Application, acknowledge that this Agreement is entered into by and between Company and you and not with Apple, Inc. (**Apple**), and Apple is not responsible for the Application and/or its content. Notwithstanding the foregoing, you acknowledge and agree that Apple and its subsidiaries are third party beneficiaries of this Agreement and that Apple has the right (and is deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof. You acknowledge that Apple has no obligation whatsoever to maintain or support the Application, or to provide any maintenance or support services related thereto. You acknowledge that you have reviewed the App Store Terms and Conditions (located online at <http://www.apple.com/legal/itunes/us/terms.html#APPS>). This Agreement incorporates by reference the Licensed Application End User License Agreement (the **LAEULA**) published by Apple (located online at <http://www.apple.com/legal/itunes/appstore/dev/stdeula/>). For purposes of this Agreement, the Application is considered the Licensed Application as defined in the LAEULA and Company is considered the Application Provider as defined in the LAEULA. If any terms of this Agreement conflict with the terms of the LAEULA, the terms of this Agreement shall control. You further acknowledge and agree that in no event will Apple be responsible for any claims by you or any third party relating to the Application (including, without limitation, a third party claim that the Application (including your possession and use thereof) infringes that third party's intellectual property rights) or your use or possession of the Application, including but not limited to: (i) product liability;

thereof) infringes that third party's intellectual property rights) or your use or possession of the Application, including but not limited to: (i) product liability claims; (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy or similar legislation. You acknowledge and agree that, to the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any applicable warranty (if any) will be Company's sole responsibility.

## Company Content

Company provides the Services to you, subject to this Agreement. The Services, including any content performed, provided or enabled by or through the Services, and all the information, communications, scripting, photos, text, video, graphics, music, sounds, images, and other materials provided to you via the Services (collectively, the **Company Content**), are intended for the lawful use by registered users of the Services. You represent and warrant that you will access and use the Services and Company Content solely for the purposes expressly permitted herein, that you have the necessary rights and authorizations to submit all information you submit via the Services, that all information you submit via the Services is accurate and otherwise complies with this Agreement, and that you will promptly notify Company if any of your information changes. Company makes no representation or warranty hereunder, express or implied, that the Services and/or Company Content are appropriate or available for use in particular locations.

You agree not to download, display or use any Company Content for use in any publications, in public performances, on websites for any commercial or other purpose, in connection with products or services that are not those of Company, in any other manner that is likely to cause confusion among consumers, that disparages or discredits Company and/or its licensors, that dilutes the strength of Company or its licensors' property, or that otherwise infringes or violates Company or its licensors' intellectual property rights or other proprietary rights. You further agree to in no other way misuse any Company Content or Third Party Services (defined below).

## User Content

When you use the Services, you provide us with different types of information. For an explanation of personal information and a description of the types of personal information you may provide to us, please see our Privacy Policy. In connection with your use of the Services, you may provide us with information such as information, data, text, software, music, audio, photographs, graphics, video, messages or other materials (collectively, **User Content**). You are solely responsible for all User Content that you upload, post, e-mail or otherwise transmit via the Services. You represent and warrant that you have all the necessary rights to upload or post your User Content and that your User Content complies with this Agreement. We reserve the right to remove or disable access to any User Content that we reasonably believe violates this Agreement.

## Accounts, Security, Passwords

Each user of the Application must have a unique user name and password, which must be created in accordance with the following conditions:

Certain areas of the Application or certain Services may require registration or may otherwise ask you to provide information to participate in certain features or access certain content. If you elect not to provide such information, you may not be able to access certain content or participate in certain features of the Application or Services, or any features at all. Creating an account or opting in to receive notifications or offers does not guarantee the receipt of any such messages or the availability to you of any promotional offer. If the Application or any of the Services requires you to create an account or otherwise submit information or data, you must complete the specified process by providing us with current, complete, and accurate registration data as requested. It is your responsibility to maintain the currency, completeness, and accuracy of your registration data and any loss caused by your failure to do so is your responsibility. After you have fully completed the registration form, you may be asked to choose a password and a user name. It is entirely your responsibility to maintain the confidentiality of your password and account. Additionally, you are entirely responsible for any and all activities that occur under your account. You agree to notify Company immediately of any unauthorized use of your account. You further agree not to e-mail, post, or otherwise disseminate any user ID, password, or other information which provides you access to the Application, Site or any of the Services. Company is not liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge.

You agree that Company may collect and use technical and usage data and related information, including but not limited to technical information about your device, date and time of Application access, system and application software, and peripherals, that is gathered periodically to, among other things, facilitate the provision of software updates, product support and other services to you (if any) related to the Services. Company will treat your personal information in accordance with the privacy policy available at <https://www.zimmerbiomet.com/privacy-policy.html.html> as such policy or the location of such policy may be changed by us from time to time) (the **Privacy Policy**).

## Purchases

You must be at least the age of majority in your state of residence and fully able and competent to enter into the terms and conditions of this Agreement, in order to purchase any third party products or other offerings provided through the Services or otherwise made available for purchase on the Site. By agreeing to this Agreement during the checkout process, or by clicking to accept or agree to this Agreement when this option is made available to you, you accept and agree to be bound by this Agreement and to abide by all applicable laws with regard to your purchase and use of any applicable Services or products, and you represent and certify that you are legally able to enter into any and all purchase agreements with us and our partners, vendors, agents, and service providers.

All prices posted on the Site are subject to change without notice. The price charged for any third party products and other offerings) will be the price in effect at the time the order is placed and will be printed in your order confirmation e-mail. Price increases will only apply to orders placed after such changes. Posted prices do not include applicable taxes. To the extent applicable, all such taxes will be added to your purchase total and will be itemized in your shopping cart and order confirmation e-mail. We strive to display accurate price information; however, we may, on occasion, make inadvertent typographical errors, inaccuracies, or omissions related to pricing and availability. We reserve the right to correct any errors, inaccuracies, or omissions at any time, and to cancel any orders arising from such occurrences. We reserve the right to change, limit, refuse, or cancel any order you place with us at our

sole discretion. In the event we change or cancel an order, we will attempt to notify you by contacting the e-mail and/or billing address provided at the time the order was made. Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. We accept the payment methods that are shown on the Site or otherwise displayed during the checkout process for all purchases. By agreeing to this Agreement, you acknowledge and consent that, depending on the type of payment method used, the payment processing services for any Services purchased on or through the Site are provided by Voxx International Corporation.

By entering into any transaction through the Site, you represent and warrant that all information you provide is true, correct, and complete (including your credit card information and billing address); that any credit card transactions submitted by you are authorized; that charges incurred by you will be honored by your credit card company; that you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the Site at the time of your order; and that you are the legal holder of any credit card or payment account used to enter into any transaction through the Site. If, in our sole discretion, we determine that (i) your means of payment is not valid, (ii) a transaction is not authorized, (iii) your means of payment cannot be processed or verified at the time of any charge, (iv) a charge is disputed for any reasons other than failure by us to deliver the product purchased by you, (v) you have abused or misused promotions or promotion codes, or (vi) you have otherwise used the Site to enter into an improper transaction, we reserve the right to immediately terminate any pending transactions, suspend your access to the Site, and terminate all of our obligations hereunder.

The Site and any Services purchased through the Site are intended to comply with the laws and regulations of the United States. If you are a consumer or user that resides outside of the United States, be advised that other countries and jurisdictions may have laws and regulatory requirements that are different from those in the United States. We reserve the right to limit the purchase and sale of any Services (including third party products and other offerings) to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis.

## Application Updates

Company may make available for download certain Application updates or upgrades to the Application to update, enhance or further develop the Application (**Application Updates**). The license granted herein allows you to download and use the Application Updates to update the Application on any Device. This Agreement does not allow you to update devices that you do not own or control, and you may not make the Application Updates available over a network where it could be used by multiple devices or multiple computers at the same time. You may not make any copies of the Application Updates, unless such copy is authorized in writing by Company.

Except as and only to the extent permitted by applicable law, or by licensing terms governing use of open-sourced components included with the Application, you may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Application, Application Updates, or any part thereof. Any attempt to do so is a violation of the rights of Company and its licensors of the Application and Application Updates. If you breach this restriction, you may be subject to prosecution and damages. By storing content on your Device, you are making a

digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rights holder. The Application and Application Updates may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce.

Company may, at its discretion, automatically download Application Updates to your Device. You agree to accept these Application Updates, and to pay for any costs associated with receiving them. The Application and Application Updates are subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Application and Application Updates. These laws include restrictions on destinations, end users and end use.

## Use of the Services

The following requirements apply to your use of the Services:

You will not use any electronic communication feature of the Services for any purpose that is unlawful, tortious, abusive, intrusive on another’s privacy, harassing, libelous, defamatory, embarrassing, obscene, threatening, or hateful.

You will not upload, post, reproduce, or distribute any information, software, or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights.

You will not collect or store personal data about other persons (including, without limitation, other users).

You will not use the Services for any commercial purpose not expressly approved by Company in writing.

You will not upload, post, e-mail, or otherwise transmit any advertising or promotional materials, including without limitation, “junk mail,” “surveys,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation or unauthorized communication.

You will not upload, post, e-mail, or otherwise transmit any material that contains viruses or any other computer code, files, or programs which might control, interrupt, limit, or interfere with the functionality of any computer software or hardware or telecommunications equipment or access, modify or destroy data without authorization.

You will not attempt to disrupt, damage or impair the functioning of the Services.

You will not attempt to circumvent any access control or functionality of the Services or to gain access to any information you are not authorized to access.

You may not decompile, reverse engineer, disassemble, rent, lease, loan, sell, sublicense, or create derivative works from the Services or the Company Content.

You may not use any network monitoring or discovery software to determine the Application’s architecture, or extract information about usage or users.

You may not use any robot, spider, or other automatic or manual device or process to monitor or copy the Site or the Company Content without the Company’s prior written permission.

Company may, but is not obligated to, remove any content or prevent any use of the Services for any reason or no reason, including for the violation of any of the requirements above.

## Mobile Service, Internet and Service Fees

The use of the Application requires use of a mobile device and may require use of a wireless mobile data service, which must be obtained from your wireless carrier, and may also require Internet access, which must be obtained from your service provider; you are solely responsible for obtaining and paying for such additional services and obtaining a suitable device, including, without limitation, all service and usage charges related thereto. You may be required to send and receive, at your cost, electronic communications related to the Application, including, without limitation, administrative messages, service announcements, diagnostic data reports, and Application Updates, from Company, your mobile carrier or third party service providers. You may incur additional charges from your wireless service provider in connection with your use of the Application. You are solely responsible for obtaining any additional subscription or connectivity services or equipment necessary to access and use the Application, including but not limited to payment of all third party fees associated therewith, including fees for information sent to or through the Application.

The Application may not work with all devices or all mobile carriers. Company makes no representations or warranties hereunder, whether express or implied, that the Application will be compatible with or provided by all mobile carriers. In the event that fees are charged for the Application, or other third party service providers charge a fee for the products or services they provide, you will pay such fee to the respective party in exchange for your continued use of such products or services. Some products and services may be subject to different or additional terms (including, without limitation, applicable fees), which you will be required to agree to prior to your use of such products and services.

Some features and functionalities of the Application, including location-based services and functionality, may require the transmission of information from and about you, including, without limitation, names, user names and passwords, e-mail address, financial information (such as credit card numbers), and/or geolocation. You consent to the transmission of that information to Company and/or Company's agents and you authorize Company and/or its agents to disclose, use, record, process, and store such information as necessary for the Application functionality and in accordance with the applicable Provider Agreement and as described in this Agreement or our Privacy Policy.

## Intellectual Property Ownership

There are a number of trademarks, logos, service marks, slogans, product names, and designations and other proprietary indicia (collectively, the **Trademarks**) used in the Application and in the Company Content. By making these Trademarks available through the Application and in the Company Content, Company is not granting you any right or license to use them in any fashion, and you are not granted any right or license under any of Company's or any third party's Trademarks or other intellectual property rights, except as specifically set forth in this Agreement. No Company Trademarks may be



used as a username, icon, identifier, hyperlink or in any other manner without Company’s prior written permission, which may be withheld, conditioned or delayed in Company’s sole and absolute discretion.

The Application, Company Content, and the selection, coordination, and arrangement thereof, is owned either by Company, or its respective licensors. The unauthorized copying, displaying, selling, distributing or other use of any Company Content or Application is a violation of the law. You acknowledge having

been advised by Company that the Company Content and Application is protected in the U.S. and internationally by a variety of laws, including but not limited to, copyright laws and treaty provisions, trademark laws, patent laws, and other intellectual property and proprietary rights laws.

## Representations and Disclaimer of Warranties

Company, Apple, Inc., Google, and each company’s respective parents, subsidiaries, officers, employees, and website contractors and each of their officers, employees and agents (collectively, **Released Parties**) make no representation or warranty whatsoever regarding the completeness, accuracy, timeliness or adequacy of any information, facts, views, opinions, statements or recommendations provided or made available to you by or through the Services or the performance of the Services. Reference to any product, process, publication or service of any third party by trade name, domain name, trademark, service mark, logo, manufacturer or otherwise does not constitute or imply its endorsement or recommendation by Company or any of the Released Parties.

The Internet, communications over the Internet, and applications, systems and networks connected to the Internet may be subject to breaches of security. To the extent permitted by applicable law, Company and the Released Parties are not responsible or liable for any resulting damage to any user’s device or computer, or the unauthorized access to any data or information, from any such security breach, or from any virus, bugs, tampering, unauthorized intervention, fraud, error, omission, interruption, deletion, defect, delay in operation or transmission, computer line failure or any other technical or other malfunction. You should also be aware that e-mail and other communications over the Internet may not be secure, and you should consider this before e-mailing Company or the Released Parties any information or posting information to the Application or through any of the Services. Company and the Released Parties make no representation or warranty whatsoever regarding the suitability, functionality, performance, availability or operation of the Services. The Services may be temporarily unavailable due to maintenance or malfunction of computer equipment.

THE SITE, APPLICATION (INCLUDING ALL APPLICATION UPDATES), SERVICES AND THE COMPANY CONTENT ARE EACH MADE AVAILABLE ON AN “AS IS,” “AS AVAILABLE” AND “WITH ALL FAULTS” BASIS. COMPANY AND THE RELEASED PARTIES SPECIFICALLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE SITE, APPLICATION, SERVICES AND THE COMPANY CONTENT (INCLUDING ANY USE OF ANY OF THE FOREGOING). COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED, PROVIDED OR ENABLED BY OR THROUGH THE SITE, APPLICATION (INCLUDING ANY APPLICATION UPDATES) OR ANY OF THE SERVICES IS SUITABLE FOR YOUR USE OR WILL MEET YOUR REQUIREMENTS; THAT THE OPERATION OF THE SITE, APPLICATION, (INCLUDING ANY APPLICATION UPDATES), OR ANY OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE;

OR THAT DEFECTS IN THE SITE, APPLICATION (INCLUDING ANY APPLICATION UPDATES) OR ANY OF THE SERVICES WILL BE CORRECTED. No oral or written information or advice given by Company or an authorized representative shall be deemed to alter this disclaimer of warranty, or to create any warranty. Should the Services prove defective, you assume the entire cost of all necessary servicing, repair or correction. For the avoidance of doubt, you acknowledge and agree that, to the maximum extent permitted by applicable law, Company and each of the Released Parties will have no warranty obligation of any kind whatsoever with respect to the Services.

## Limitation on and Exclusion of Remedies and Damages

YOU AGREE THAT COMPANY AND THE RELEASED PARTIES ARE NOT LIABLE TO YOU FOR DAMAGES OF ANY KIND, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, **DAMAGES**) ARISING OUT OF OR RESULTING IN ANY WAY FROM OR IN CONNECTION WITH: (I) THE SITE, APPLICATION OR ANY OF THE SERVICES, INCLUDING ANY COMPANY CONTENT OR ANY THIRD PARTY SERVICES OR PRODUCTS PROVIDED OR OTHERWISE MADE AVAILABLE BY OR THROUGH THE SITE, APPLICATION OR ANY OF THE SERVICES; (II) ANY ERRORS OR OMISSIONS IN THE TECHNICAL OPERATION OR CONTENT OF THE APPLICATION OR THE SERVICES; (III) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY COMPANY, LAW ENFORCEMENT OR OTHER AUTHORITIES REGARDING YOUR USE OF THE APPLICATION, SERVICES, COMPANY CONTENT OR USER CONTENT; (IV) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OWNERS; (V) THE LOSS, MODIFICATION, ACCESS TO, BREACH OF OR SECURITY OF ANY DATA SUBMITTED TO OR PROVIDED BY THE APPLICATION OR ANY OF THE SERVICES; OR (VI) THE CONDUCT, ACTIONS OR INACTIONS OF APPLICATION USERS OR YOUR INTERACTIONS OR RELATIONSHIPS WITH APPLICATION USERS, EVEN IF COMPANY OR THE RELEASED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE REASONABLY FORESEEABLE, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF, OR UNAUTHORIZED ACCESS TO, THE APPLICATION OR ITS RELATED INFORMATION OR PROGRAMS, OR ANY OF THE SERVICES. THESE LIMITATIONS APPLY EVEN IF REPAIR, REPLACEMENT, OR A REFUND FOR THE APPLICATION DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES; OR COMPANY KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES OR SUCH DAMAGES ARE REASONABLY FORESEEABLE.

THE SITE, APPLICATION AND ANY OF THE SERVICES MAY CONTAIN FACTS, OPINIONS, VIEWS, STATEMENTS AND RECOMMENDATIONS OF THIRD PARTY INDIVIDUALS AND ORGANIZATIONS. COMPANY DOES NOT REPRESENT OR ENDORSE THE ACCURACY, TIMELINESS OR RELIABILITY OF ANY FACTS, OPINIONS, VIEWS, STATEMENTS OR RECOMMENDATIONS OR OTHER INFORMATION DISPLAYED, UPLOADED OR DISTRIBUTED THROUGH THE SITE, APPLICATION, AND ANY OF THE SERVICES. YOU ACKNOWLEDGE THAT ANY RELIANCE UPON ANY SUCH FACTS, OPINIONS, VIEWS, STATEMENTS OR RECOMMENDATIONS IS AT YOUR SOLE RISK. IN NO EVENT WILL COMPANY OR THE RELEASED PARTIES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, OR THE DISCLAIMER OF SOME TYPES OF DAMAGES; AS A RESULT, SOME OF THE ABOVE WARRANTS, CONDITIONS, OR DISCLAIMERS MAY NOT APPLY TO YOU, AND OTHER WARRANTIES

OF DAMAGES, AS A RESULT, SOME OF THE ABOVE WARRANTIES, CONDITIONS, OR DISCLAIMERS MAY NOT APPLY TO YOU, AND OTHER WARRANTIES, CONDITIONS, OR DISCLAIMERS ABOVE SHALL APPLY TO THE EXTENT THAT THEY ARE VALID IN SUCH JURISDICTIONS.

BY ACCESSING THE APPLICATION OR SITE, OR BY ACCESSING OR USING ANY OF THE SERVICES, REGISTERING WITH THE APPLICATION AND/OR ACCEPTING ANY INFORMATION FROM THE APPLICATION OR ANY OF THE SERVICES, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD COMPANY AND THE RELEASED PARTIES HARMLESS FROM AND AGAINST ANY ACTUAL OR ALLEGED CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, DAMAGES, LOSSES, LIABILITIES, AND ALL COSTS AND EXPENSES OF DEFENSE (INCLUDING REASONABLE ATTORNEYS’ FEES AND COURT COSTS) ARISING OUT OF OR RELATING TO: (A) YOUR BREACH OF THIS AGREEMENT; (B) YOUR VIOLATION OF ANY LOCAL, STATE, FEDERAL OR INTERNATIONAL LAW, RULE OR REGULATION; (C) A CLAIM BY A THIRD PARTY THAT IS BASED ON YOUR USE OF THE SITE, APPLICATION, SERVICES, COMPANY CONTENT OR USER CONTENT; (D) INFORMATION OR MATERIAL SUBMITTED, POSTED OR TRANSMITTED BY OR THROUGH YOUR COMPUTER OR ACCOUNT, EVEN IF NOT SUBMITTED, POSTED OR TRANSMITTED BY YOU; (E) ANY MISREPRESENTATION MADE BY YOU; (F) ANY DISPUTE BETWEEN YOU AND ANOTHER USER OF THE SITE, APPLICATION, OR ANY OF THE SERVICES; (G) THE THEFT, MISAPPROPRIATION OR DISCLOSURE OF YOUR USERNAME OR PASSWORD; OR (H) YOUR AUTHORIZATION OF ANYONE ELSE TO USE YOUR USERNAME OR PASSWORD. YOU WILL COOPERATE AS FULLY AND AS REASONABLY REQUIRED IN COMPANY’S DEFENSE OF ANY AND ALL SUCH CLAIMS. COMPANY RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU, AND YOU SHALL NOT, IN ANY EVENT, SETTLE ANY MATTER WITHOUT THE PRIOR WRITTEN CONSENT OF COMPANY, WHICH MAY BE WITHHELD, CONDITIONED OR DELATED IN COMPANY’S SOLE AND ABSOLUTE DISCRETION.

## Links to Third Party Applications and Services

The Services may provide connectivity or links to other third party services, websites, applications, software, and other content from third party providers such as social media partners, wireless carriers, and third party software application developers (**Third Party Services**). The Services may allow you to add/configure certain Third Party Services to your Device. Company has no control over, makes no representations or warranties whatsoever about any of the Third Party Services that you may access, is not responsible for the availability of such Third Party Services, and does not endorse nor is responsible or liable for any content or other materials on or available from such Third Party Services. Your use of the Third Party Services may be subject to additional terms, including software license terms, of those third parties.

You understand and agree Company is not responsible for these companies, or their use of any other of your information. Your use of the Third Party Services is at your own risk.

## Notices

We may send you notices, responses or other communications electronically. You hereby consent to receive communications from us electronically, including, without limitation, by e-mail or by posting notices. You agree that all agreements, notices, disclosures and other communications that we provide

to you electronically shall satisfy any requirement herein or any legal requirement that such communications be in writing.

# Assignment

Company may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement, or any part of it, to any other person or third party. Any attempted assignment in violation of the foregoing shall be null and void and of no force or effect. You may not

transfer to anyone else, either temporarily or permanently, any rights to access or use all or any part of the Application. To the extent that you allow a third party to access or use your Device, you shall remain solely responsible for the access and use of the Application by others using the Device.

# General Information

This Agreement constitutes the entire and exclusive agreement between you and Company as to the subject matter hereof, superseding any prior and contemporaneous understandings and agreements, whether written or oral, between you and Company relating to such subject matter. You may also be subject to additional terms and conditions (including, but not limited to, the applicable Provider Agreement and the terms and conditions from your wireless carrier or operator) that may apply to your use of the Services. If any provision of this Agreement is held to be invalid or unenforceable by any law, rule, order or regulation of any government or by the final determination of any state or federal court, such invalidity shall not affect the validity or enforceability of any other provision of this Agreement, and the remainder of this Agreement shall continue in full force and effect. The failure or delay of Company to exercise or enforce any right or provision of this Agreement shall not impair any such right or constitute a waiver of such right or provision.

By accessing and using the Services, you agree that the statutes and laws of the United States and the State of Indiana without regard to conflicts of laws principles, will apply to all matters relating to access to and use of the Application and any of the Services, and you agree that any litigation shall be subject to the exclusive jurisdiction of the state or federal courts in the State of Indiana, USA. You agree that, to the extent permitted by applicable law, any and all disputes, claims, and causes of action arising out of or connected with THE SITE, APPLICATION, services (INCLUDING ANY USE THEREOF) and/or THIS AGREEMENT, will be resolved individually, without resort to any form of class action, AND YOU WILL NOT BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OTHER USERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. This Agreement operates to the fullest extent permissible by law. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement.

The Services are controlled or operated (or both) from the United States and are not intended to subject Company to any non-U.S. jurisdiction or law. The Services may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Services is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. Company may limit the Application's availability at any time, in whole or in part, including any of the Services provided or made available through the Application, to any person, geographic area or jurisdiction that the Company chooses.

The Services are not intended for children under the age of 13. We do not knowingly collect, use, or disclose personal information from children under the

The Services are not intended for children under the age of 13. We do not knowingly collect, use, or disclose personal information from children under the age of 13. If you become aware that a child under your care has accessed or used the Services, or has provided us with information without your consent, please contact us at the contact information listed below.

You acknowledge and agree that your use of the Services may involve you providing an “electronic signature” indicating your desire to use the Services. Your “electronic signature” indicates your acceptance of this Agreement, and your consent to receive communications about this Agreement electronically.

If you wish to receive communications in another manner, you may contact us at [support@zbmymobilitysolutions.com](mailto:support@zbmymobilitysolutions.com) to change your communication preferences. You may not use or otherwise export or re-export the Services except as authorized by United States law and the laws of the jurisdiction in which the Services was obtained. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. By using the Services, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Services for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

Both you and Company acknowledge and agree that no partnership is formed and neither of you nor Company has the power or the authority to obligate or bind the other. The failure of Company to comply with this Agreement because of an act of God, war, fire, riot, terrorism, earthquake, actions of federal, state or local governmental authorities or for any other reason beyond the reasonable control of Company, shall not be deemed a breach of this Agreement. This Agreement constitutes a binding agreement between you and Company and is accepted by you upon your use of the Services. This Agreement constitutes the entire agreement between you and Company regarding access to and use of the Services. The section titles in this Agreement are for convenience only and have no legal or contractual effect.

The Services are each provided and made available pursuant to this Agreement. In the event of a complaint or concern regarding this Agreement, or any of the Services, or for more information, please contact Company at the following e-mail address: [support@zbmymobilitysolutions.com](mailto:support@zbmymobilitysolutions.com).

In connection with your use of this Application and in connection with your use of certain Services, you or other third parties may provide us with personal data or other data that uniquely identifies you to us or to relevant third parties including your healthcare practitioners (**Personal Information**, as that term is defined in the Privacy Policy). To the extent that you provide Personal Information in your use of the Application and Services, you consent to our collection, use, and disclosure of that Personal Information in accordance with our Privacy Policy at <https://www.zimmerbiomet.com/privacy-policy.html.html>, including consent to our transfer of the Personal Information to third parties in other countries.

This material is intended for patients utilizing the mymobility<sup>®</sup> application by Zimmer Biomet.

©2019-2020 Zimmer Biomet.