

Intellijoint Capital Equipment Purchase Terms and Conditions

This Capital Equipment Purchase Terms and Conditions (“CEPTC”) Agreement is to be read in conjunction with the Capital Equipment Product Purchase Agreement (“CEPPACEPPA”) issued by Intellijoint that references this Agreement and is signed by both Parties. Unless otherwise agreed to in writing, the following terms and conditions apply to Customer’s purchases of Intellijoint products as further defined below. Each of Intellijoint and Customer is a “Party” and together the “Parties”.

Intellijoint manufactures, and Customer wishes to use, the Intellijoint Navigation System including Intellijoint HIP or Intellijoint KNEE (the “System”) for use in total joint arthroplasty procedures (“Procedures”). The System comprises the components and parts listed under the heading Purchased Equipment on the CEPPA (the “Components”) as well as the one-time-use products listed on the CEPPA (“Consumables”). The System further comprises access to the cloud-based Intellijoint VIEW product for pre-operative planning (the “Services”). Each System workstation incorporates Intellijoint proprietary software and third-party software (the “Software”) which are licensed to Customer as described further below.

1. TERM, DELIVERY AND PAYMENT

- 1.1 **Term:** The term of this Agreement shall be 12 months from the Effective Date (the “Initial Term”) and will automatically renew for 12 months periods (each a “Subsequent Term” and together with the Initial Term the “Term”) unless terminated by one of the Parties in accordance with this Agreement.
- 1.2 **Delivery:** All Components and Consumables, including Purchased Equipment, ordered under this Agreement will be shipped F.O.B. Customer facility within 15 days of the appropriate purchase order or the effective date of any related agreement(s), with all freight and insurance costs prepaid by Intellijoint unless otherwise noted in an applicable purchase order. The risk of loss for all products under this Agreement shall be Intellijoint’s until such products have been delivered to Customer. Subject to the consignment terms of Appendix A, title to Consumables shall pass to Customer upon being delivered to Customer. Without limiting the foregoing, Intellijoint shall be liable for damage caused by improper boxing, crating, or packing.
- 1.3 **Termination:** Either Party may terminate this Agreement with or without cause upon 30 days’ written notice to the other Party. Upon termination, the System will be removed from each Affiliated Facility by Intellijoint at Customer’s earliest convenience and access to the Services and Software will be terminated. Consumables and Components where title has been transferred to Customer will remain with the Customer.
- 1.4 **Fee Per Use:** Customer may use the System subject to the Fee Per Use License, outlined further below, and the payment of both the Technology Fee and Procedure Kit Fee outlined in the CEPPA, for each instance in which the System is used for a Procedure at an Affiliated Facility.
- 1.5 **Payment Terms and Invoicing:** Unless otherwise indicated, Intellijoint shall provide to Customer an invoice for each order placed and shipped/delivered/provided to the Customer and the



invoice will include the currency for all payments. Customer shall remit full payment to Intellijoint 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. Customer agrees to pay any expenses incurred to process or compel the settlement of any late payments. Intellijoint, at its sole discretion, reserves the right to 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 Intellijoint. Should Customer elect to cancel its order, in whole or in part, Customer shall be liable to Intellijoint for reasonable cancellation charges including but not limited to all costs and expenses incurred by Intellijoint in connection with procuring and filling Customer's purchase order up to the date of cancellation. 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 Intellijoint by the Customer shall be paid by the Customer to Intellijoint immediately upon such resolution. Any invoice dispute is waived by Customer if such notice is not received by Intellijoint within thirty (30) days of the invoice date. All payments are non-refundable.

- 1.6 Taxes & Gross Up:** All fees are exclusive of taxes, levies or duties imposed by taxing authorities, and Customer shall be responsible for any applicable taxes, levies or duties (excluding taxes based on Intellijoint's income). If Customer is a tax-exempt entity or claims exemption from any Taxes, Customer shall provide a certificate of exemption, upon execution of this Agreement, and after receipt of valid evidence of exemption, Intellijoint shall not charge any taxes from which Customer is exempt. All payments to be made by Customer to Intellijoint under this Agreement shall be made free and clear of and without any tax withholding unless Customer is required to do so, in which case the sum payable by Customer shall be increased to the extent necessary to ensure that Intellijoint receives a sum net of any deduction or withholding equal to the sum which it would have received had no such tax withholding been made or required to be made. Customer shall promptly furnish Intellijoint with all official receipts evidencing payment of Taxes due under or in relation to this Agreement.
- 1.7 Price Adjustment:** All prices provided under an Agreement are based off a discount rate from List Price. The List Price may be adjusted for inflation by the Intellijoint for each Subsequent Term by an amount equal to or less than the annual Consumer Price Index published for the United States without any amendment to the Agreement.

2. PRODUCT AVAILABILITY AND SUPPORT

- 2.1 System Availability:** The Purchased Equipment has been purchased by Customer for the sole purpose of performing Procedures in accordance with the quantities outlined in the CEPPA. Consumables are typically pre-purchased by Customer but in certain, specific situations may be stored or consigned at Customer location(s) to facilitate access and availability for Procedures in accordance with the quantities and locations outlined in CEPPA and the consignment terms described in Appendix A. In the event that Customer requires delivery of additional equipment or



consumables and provides Intellijoint with less than 72 hours notice prior to the Procedure start time then an additional Late Delivery Notice Fee will apply as outlined in the CEPPA.

- 2.2 **Case Support:** Customer agrees that, on the earlier of a) sufficient staff training or b) 120 days after the Effective Date, all use of the System for Procedures will be performed independently by Customer's staff and physicians. If for any reason a direct sales representative of Intellijoint is used during a Procedure an additional Direct Case Support Fee will apply as outlined in the CEPPA.
- 2.3 **Product Upgrades:** During the Term, Intellijoint may develop and offer additional products that are not currently listed on the CEPPA or which provide new functionality, substantial improvements to existing functionality, or require hardware changes ("Upgrades"). Intellijoint will issue a revised CEPPA, to be signed by both Parties, to incorporate Upgrades into this Agreement. If Upgrades are used by Customer prior to the approval of a revised CEPPA then 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 Intellijoint and Customer. Upgrades will be made available to Customer at prices equal to those offered to other similarly situated customers of Intellijoint.
- 2.4 **Consumable Products:** Consumables should be purchased only through Intellijoint and its authorized distributors and resellers in order to ensure they are manufactured by or on behalf of Intellijoint and meet Intellijoint's quality requirements. Consumable products will be labeled as "For Single Use" or "Single Use Only" or "Do Not Reuse" or similarly to indicate that the Consumable is to be used only once in delivering patient care. Any re-use, reprocessing, remanufacture, or reconstruction of Consumables is strictly prohibited. In addition to other available remedies, the resale or reuse of any Consumable is subject to the laws and remedies available for patent infringement.
- 2.5 **Discontinued Products:** Intellijoint may discontinue any product, product line or business segment and its sole discretion and any such discontinuation shall not constitute a breach of this Agreement.
- 2.6 **Support and Updates:** Intellijoint shall provide after sales service as reasonably required including providing or installing Updates (as further defined below) in order to maintain the System Software in good working order and in accordance with Intellijoint documentation during the warranty periods described in Sections 28 – Software and Services Warranty and 29 – System and Consumables Warranty. Updates may include bug fixes, patches and other error corrections that enhance existing System functions and operation and that do not require hardware changes (collectively, "Updates"). Updates may modify or delete in their entirety certain existing features and functionality of the System. Additional Support, Updates and Upgrades may be purchased separately. Updates do not include the provision of Components that may need replacement from time-to-time or the provision of routine maintenance as described in Intellijoint manuals, labels or inserts. Additional coverage for replacement Components and service-level commitments may be purchased separately.
- 2.7 **Lost, Damaged or Broken Equipment:** Should any System or part thereof be lost, damaged or broken due to the actions, misuse, or negligence of a User, Customer, or Customer's employees, Customer shall be responsible for the replacement of the System at the then-current replacement price as maintained by Intellijoint.



3. INTELLECTUAL PROPERTY AND LICENSING

- 3.1 **Ownership:** Intellijoint shall retain all ownership of the System, and any portion thereof, along with all intellectual property rights in the System unless otherwise explicitly transferred to Customer by this Agreement or an agreement signed by both Parties. In no event shall anything in this Agreement transfer any ownership right, title or interest in the Software, the Services, or any part thereof, to Customer. Intellijoint shall retain ownership of the Purchased Equipment until payment has been received from Customer at which time title to the Purchased Equipment shall pass to Customer subject to delivery. Intellijoint warrants that they are the rightful owner of the Purchased Equipment and are legally able to transfer title ownership to the Customer.
- 3.2 **Fee Per Use License:** Subject to compliance with this Agreement, Intellijoint hereby provides Customer with a limited, revocable, non-transferable, non-exclusive license to permit its Affiliates, surgeons, and surgical teams (collectively “Users”) to use the System solely to perform Procedures at the Affiliated Facilities. Additional rights and limitations related to the use of the Services are governed by the Intellijoint VIEW Terms of Service located at <https://www.intellijointsurgical.com/view-terms-of-service/> (“Service Terms”). Customer shall ensure that Users do not use the System for any off-label purposes or in any experimental procedure without Intellijoint’s prior written authorization. Customer may publicly display or perform the System, including the capture and publication of any user interfaces, only for academic, research, education and demonstration purposes and in accordance with any branding guidelines published by Intellijoint. Customer shall ensure that Users do not publish, share, distribute, rent, lease, lend, alter, modify, adapt, create derivative works of, translate, deface, or reverse engineer the System or any portion thereof, or attempt to do so, or permit, acquiesce, authorize or encourage any other party to do so, without the express written permission of Intellijoint. Customer shall ensure that Users do not remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the System. Only Users at Affiliated Facilities may use the System unless Intellijoint gives its prior written consent (which consent shall not be unreasonably withheld) to have the System used at another location. Finally, Customer shall ensure that Users do not reproduce or attempt to reproduce the System, or any portion thereof, without the express written permission of Intellijoint.
- 3.3 **Feedback and Innovations:** Customer agrees to ensure that all Users agree and adhere to the provisions of this section. Users agree to provide Intellijoint with feedback on the System, and any portion thereof, as reasonably requested by Intellijoint. Users hereby agree that Intellijoint shall own all such feedback, including any associated intellectual property rights. Users will not take any steps or threaten to take any steps, directly or indirectly through some other person, to prevent Intellijoint from further developing the System, or any portion thereof, in any manner whatsoever (the “Developments”). Users will not prevent Intellijoint, its distributors, resellers, value added resellers, technology partners or integrators (collectively “Partners”) from distributing the System or Developments. Users will not restrain other Intellijoint customers from using the System or Developments regardless of whether a User develops or implements their own developments or obtains associated intellectual property rights (including for



avoidance of doubt, patent rights) related to the System. Users shall not seek any compensation from Intellijoint, its Partners or other Intellijoint customers in relation to the Developments and agrees to sign such further documents and take such further steps as Intellijoint indicates are reasonably necessary to give effect to this provision.

- 3.4 Reporting Obligations:** Customer shall report to Intellijoint (and provide all available information) within twenty-four (24) hours any incident and near incident involving the System that has or could have resulted in death or serious injury. In addition, Customer shall report to Intellijoint within five (5) business days all complaints, reports, notices, or comments of any kind (including complaints, reports, notices, or comments from a customer or any governmental entity that any of the documentation relating to any System or its constituent parts is inadequate or relating to any allegation of deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of any System or its constituent parts) received by Customer from any of its customers or from any governmental entity in any form relating to adverse events, injuries, or malfunctions of or involving any element of the System. If Customer has any doubt as to whether a particular incident, near incident, complaint, report, notice, or comment should be reported to Intellijoint under this Agreement, Customer shall err on the side of over inclusiveness and report promptly such incident, near incident, complaint, report, notice, or comment to Intellijoint.
- 3.5 Investigations:** Customer shall assist Intellijoint as necessary in investigating any incidents and near incidents, and all complaints, reports, notices, or comments of any kind that are filed by Customer or received by Customer from its customers or from any governmental entity in any form relating to adverse events, injuries, or malfunctions of or involving any element of the System ("Events"). Customer shall not file any incident or near incident reports with any government authority and shall not initiate the recall of any System or its constituent parts for any reason without prior consultation with Intellijoint unless required by Applicable Law. Customer will provide Intellijoint with all data relevant to any Events upon Intellijoint request. Data shall be provided to the manufacturer via validated methods that do not compromise patient protected information as outlined in Chapter IX, Articles 109 and 110 of MDR and 21 CFR Part 50 when applicable.
- 3.6 Recall and Field Safety Corrective action ("FSCA"):** In the event of the occurrence of a recall or FSCA of or for any element of the System, whether decided by a governmental authority or by Intellijoint in its discretion, Customer shall fully cooperate, at Customer's expense, with Intellijoint in implementing and completing such recall or field corrective action.

4. PRIVACY AND REGULATORY

- 4.1 Access to Books and Records:** The following clause is included herein to address Section 1861(v)(1)(I) of the Social Security Act and corresponding regulations to the extent it applies to this Agreement (as well as any prior agreements for the same or similar services). If said section of the Social Security Act is not applicable to this Agreement then this section shall be deemed not to be part of this Agreement and shall be null and void. Until the expiration of four (4) years



after the furnishing of services pursuant to this Agreement, Intellijoint shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement, books, documents, and records which are necessary to verify the nature and extent of costs incurred by Intellijoint under this Agreement; and if Intellijoint carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve (12) month period (including contracts for both goods and services in which the service component is worth \$10,000 or more over a twelve (12) month period), with a related organization, such subcontract must contain a clause to the effect that until the expiration of four years after the furnishing of services pursuant to such subcontract, the related organization shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, the subcontract, books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

- 4.2 **Privacy:**The collection, use, retention, disclosure or other processing (collectively “Processing”) of any personally information (“PI”) and personal health information (“PHI”) for use with the Services is governed by the Intellijoint Privacy Notice, accessible at <https://www.intellijointsurgical.com/privacy-notice/>. If either Party wishes to Process PI or PHI in a manner not contemplated by the Privacy Notice, the Party intending to Process the PI or PHI (the “Requesting Party”) must provide prior written notice to the other Party (the “Approving Party”) regarding its intention(s) and the Requesting Party must further obtain the prior written agreement of the Approving Party prior to Processing the PI or PHI in any manner that would impose legal obligations with respect to the Processing of the PI or PHI of the Approving Party.
- 4.3 **HIPAA Requirements:**To the extent applicable to this Agreement, Intellijoint shall comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d (“HIPAA”) and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Part 142 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements.” Intellijoint agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information, other than as permitted by HIPAA Requirements and the terms of this Agreement. Intellijoint shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.
- 4.4 **Compliance with Laws:**Intellijoint agrees to comply with all applicable federal, state and local laws, rules, regulations, and guidelines, and all applicable rules, regulations, and policies of Customer of which Intellijoint is given timely notice during the term of this Agreement. Upon request, Customer shall provide reasonable support to Intellijoint in complying with such laws and regulations and Customer will not knowingly interfere with Intellijoint’s compliance efforts.



- 4.5 **Exclusion / Debarment:** Intellijoint hereby represents and warrants that it has not been debarred, suspended, excluded or otherwise determined to be ineligible to participate in federal healthcare programs (collectively, “Debarred”) and acknowledges that Customer shall have the right to terminate this Agreement immediately, without notice and with no further obligation, in the event that Intellijoint is Debarred. Accordingly, Intellijoint shall provide Customer with immediate notice if, during the term of this Agreement, Intellijoint becomes Debarred, or receives notice of action or threat of action with respect to its Debarment.
- 4.6 **Insurance:** Intellijoint shall maintain commercial general liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence. Intellijoint shall maintain worker’s compensation and employer’s liability insurance per statutorily required minimums in the amount of Two Million Dollars (\$2,000,000) for each incident, Two Million Dollars (\$2,000,000) disease-policy limit and Two Million Dollars (\$2,000,000) disease for each employee. Intellijoint shall maintain medical device liability insurance in the amount of Ten Million Dollars (\$10,000,000) for products and completed operations. To the extent applicable, a cyber liability policy of insurance of Five Million Dollars (\$5,000,000) in coverage for network security and privacy risks including coverage for related regulatory defense and penalties and coverage for data breach expenses. Intellijoint shall provide certificates evidencing all such insurance upon request of Customer.

5. WARRANTY

- 5.1 **Software and Services Warranty:** Intellijoint warrants for a period of one (1) year from their date of delivery to Customer that the Software and Services shall function without defects which materially affect Customer's use of the Software or Services and in accordance with Intellijoint's specifications for the Software and Services provided that the Software and Services are: a) used in accordance with approved labeling and directions for use; b) not altered by Customer; c) used in conjunction with the System and Consumables provided under this Agreement; and d) that the System has been maintained in accordance with Company recommended maintenance procedures. In the event of any failure of the Software or Services that materially affects Customer's use of the System then Customer's exclusive remedy under this warranty is to require Intellijoint to correct such failure and such remedy is conditioned upon Intellijoint receiving written notice (or oral notice promptly confirmed in writing).
- 5.2 **System and Consumables Warranty:** Intellijoint warrants for a period of one (1) year from their date of delivery to Customer that the Components and Consumables manufactured by Intellijoint will be free from defects in workmanship and materials when used for the purpose of Procedures as contemplated by this Agreement. Customer's exclusive remedy under this warranty is to require Intellijoint to repair or replace any failed System Components or Consumables and such remedy is conditioned upon Intellijoint receiving written notice (or oral notice promptly confirmed in writing).
- 5.3 **No Implied Warranties:** EXCEPT AS EXPRESSLY SET OUT HEREIN, NEITHER PARTY MAKES ANY WARRANTIES, CONDITIONS, ENDORSEMENTS, REPRESENTATIONS OR GUARANTEES, WHETHER



EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, INTELLIJoint DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM SHALL FUNCTION WITHOUT FAILURE, ERROR OR INTERRUPTION. THE LIMITATIONS ON LIABILITY, EXCEPTIONS TO LIMITATION AND DISCLAIMER OF IMPLIED WARRANTIES SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

6. CONFIDENTIALITY

6.1 Confidentiality: As used herein, the “Confidential Information” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “Discloser”) to the other Party (the “Recipient”), which may include without limitation: (a) information the Discloser has marked or identified as confidential or proprietary; (b) intellectual property including but not limited to trade secrets, patents, patent applications and related documentation; and (c) Discloser’s business plans, business methodologies, financial condition, financial projections, or development plans. Recipient agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third-party any Confidential Information of the Discloser, except as approved in writing by the Discloser, and will use the Confidential Information of the Discloser only as reasonably necessary to fulfill the purposes of this Agreement. The Recipient will also protect such Confidential Information with at least the same degree of care that the Recipient uses to protect its own Confidential Information, but in no case, less than reasonable care. The Recipient will limit access to the Confidential Information of the Discloser to only those of the Recipient’s affiliates, employees, partners, contractors, investors or authorized representatives having a need to know (herein “Representatives”). Prior to a Representative receiving Confidential Information they will be advised of the obligations contained in this Agreement. Recipient undertakes to ensure that all Representatives to whom it discloses the Confidential Information will comply with the confidentiality obligations set out in this section as if they were parties to this Agreement. Recipient further undertakes to ensure its Representatives enter into written confidentiality and non-disclosure agreements substantially similar to this Agreement. Representatives must either agree in writing to be bound by this Agreement, or have previously entered into a binding confidentiality agreement with the Recipient that affords substantially similar protection of the Confidential Information as this Agreement. Recipient will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Discloser if the Recipient can demonstrate that such portion of Confidential Information: (a) was in the public domain at the time it was disclosed to the Recipient; (b) entered the public domain subsequent to the time it was disclosed to the Recipient, through no fault of the Recipient; (c) was already lawfully in the Recipient’s possession at the time it was disclosed to the Recipient; (d) was communicated to the Recipient free of any obligation of confidence subsequent to the time it was disclosed to the Recipient; or (e) was independently developed by employees or agents of the



Recipient without reference to the Confidential Information. Notwithstanding the above, the Recipient may disclose certain Confidential Information of the Discloser, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the Recipient uses all reasonable efforts to provide sufficient notice of this requirement to the Discloser to enable the Discloser to seek an order limiting or preventing the disclosure of the Confidential Information. The obligations in respect of Confidential Information shall survive for three (3) years following the expiration of this Agreement, or in the case of trade secrets, for so long as the information remains a trade secret. For clarity, the terms of this Agreement are confidential and shall not be disclosed by either Party except to those employees, agents or officers or professional advisors with a need to know the information. Upon termination or expiration of this Agreement, the Recipient shall return or destroy all Confidential Information of the Discloser in the Recipient's possession or control. Notwithstanding any other term in this Agreement, neither Party is obligated to erase confidential information archived by their automatic security or disaster recovery systems. Any such retained copy shall remain subject to the confidentiality and non-use obligations herein. The provisions of this section shall survive termination or expiration of this Agreement. Each Party acknowledges that any breach or threatened breach of this section would give rise to irreparable harm for which monetary damages would be inadequate, and in such event the non-breaching Party shall be entitled to seek equitable relief, in addition to any other remedy available under this Agreement or at law or in equity, without the posting of a bond.

7. INDEMNIFICATION AND LIMITATIONS OF LIABILITY

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SYSTEM IS AN ADJUNCT TO, AND NOT A REPLACEMENT FOR, A SURGEON'S KNOWLEDGE, EXPERTISE, AND JUDGMENT AND AS SUCH, RESPONSIBILITY FOR THE USE OF THE SYSTEM IN SURGERY REMAINS WITH THE SURGEON.

7.1 Indemnification: Intellijoint shall, at its expense, indemnify, defend and hold harmless Customer and its Affiliates and their respective directors, officers, employees, surgeons, and representatives (collectively "Customer Indemnitees") from and against any claim, action or regulatory proceeding brought against a Customer Indemnitee to the extent the claim or action is based upon a claim that: (a) Consumables manufactured by or on behalf of Intellijoint are faulty or that used in accordance with the instructions of Intellijoint they have caused damage to a patient that is not the result of the surgeon's judgment and expertise; (b) that the System failed to operate in accordance with Intellijoint's documentation during a Procedure and caused damage to a patient that is not the result of the surgeon's judgment and expertise (each a "Customer Claim"); (c) any facts or circumstances that would constitute a breach by Intellijoint of any of its representations, warranties or obligations under this Agreement; (d) that Intellijoint's technology used to provide the System infringes or misappropriates any copyright, trade secret, registered patent or registered trademark right of a third party in the territory or country where Affiliated Facilities operate; or (e) gross negligence, willful misconduct, or violation of law by Intellijoint, its employees or its subcontractors, and shall pay every judgment



of a court of competent jurisdiction awarded against Customer Indemnitee, along with reasonable attorney fees, to the extent it results from a Customer Claim. In no event will Intellijoint have any obligations or liability under this section arising in whole or in part from any content, information or data provided by Customer or other third parties or in cases where such finding of liability would not have existed but for the provision of the same. Intellijoint shall not be required to indemnify Customer in the event of: (a) modification of the System by Customer that is in conflict with Customer's obligations or as a result of any prohibited activity as set forth herein; (b) use of the System in a manner inconsistent with the documentation; (c) use of the System in combination with any other application, product, or service not provided by Intellijoint if such claim would not have occurred without such combination; or (d) use of the System in a manner not otherwise contemplated by this Agreement or in contravention of applicable law. Customer must: (i) promptly notify Intellijoint upon receiving notice of a Customer Claim; (ii) give Intellijoint the right to conduct the defence and settlement of the claim; and (iii) act in accordance with the reasonable instructions of Intellijoint and give Intellijoint such assistance as Intellijoint reasonably requests provided that Intellijoint reimburses Customer for any out-of-pocket expenses it incurs as a result. For added clarity, this indemnity will not apply to any Consumables or System Components that are not purchased from Intellijoint. If the System infringes or may be alleged to infringe a third party's copyright, registered patent or registered trademark in the in the territory or country where Affiliated Facilities operate, then Intellijoint may: (i) obtain the right for Customer, at Intellijoint's expense, to continue using the System; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the System so that they no longer infringe. If Intellijoint does not believe that the options described in this section are reasonable, then Intellijoint may suspend or terminate Customers' use of the affected System, or any portion thereof, for convenience effective immediately. Customer shall defend Intellijoint and its Affiliates and their respective directors, officers, employees and representatives (including Intellijoint Reps) from and against any claim, action or regulatory proceeding based upon or arising from: (a) any facts or circumstances that would constitute a breach by Customer of any of its representations, warranties or obligations under this Agreement; (b) any violation by Customer of applicable laws; (c) any bodily injury, death or property damage resulting or arising from a Procedure, including the use of the System or Consumables , other than a Customer Claim; or, (d) without limiting the foregoing, any bodily injury, death or property damage resulting from any modifications or alterations to the System made by Users without the prior written consent of Intellijoint. Intellijoint must: (i) immediately notify Customer of any claim; (ii) give Customer the right to conduct the defence and settlement of the claim; and (iii) act in accordance with the reasonable instructions of Customer and give Customer such assistance as Customer reasonably requests provided that Customer reimburses Intellijoint for any out-of-pocket expenses it incurs as a result.

7.2 Limitation of Liability for Indemnification: TO THE EXTENT ALLOWED BY APPLICABLE LAW, A PARTY'S LIABILITY TO THE OTHER PARTY, INCLUDING IN RELATION TO ITS OBLIGATION TO PAY DAMAGES UNDER ITS INDEMNIFICATION SHALL BE LIMITED TO THE GREATER OF: (A) THE TOTAL PAYMENTS MADE BY THAT PARTY TO THE OTHER PARTY DURING THE PRECEDING CALENDAR



YEAR PLUS THE VALUE OF ANY PURCHASED EQUIPMENT; AND (B) THE INSURANCE COVERAGE THAT PARTY RECEIVES (INCLUDING THAT WHICH THE INSURER MAKES AVAILABLE TO PAY TO THIRD PARTIES) IN RESPECT OF THE CLAIM GIVING RISE TO THE LIABILITY.

- 7.3 **Exceptions to Limitations:** NOTWITHSTANDING ANY OTHER PROVISION, THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL NOT APPLY TO: (A) ANY WILFUL OR MALICIOUS BREACH OF THE FEE PER USE LICENSE OR OF THE PROHIBITION AGAINST REVERSE ENGINEERING; (B) ANY WILFUL VIOLATION OR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ONE PARTY BY THE OTHER PARTY; OR (C) IF AND TO THE EXTENT THAT THE LAWS OF A COMPETENT JURISDICTION REQUIRE LIABILITIES BEYOND AND DESPITE THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS.
- 7.4 **Exclusion of Consequential Damages:** IN NO EVENT WILL INTELLIJOINT BE LIABLE UNDER THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF INTELLIJOINT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8. OTHER TERMS

- 8.1 **Independent Contractor:** In the performance of this Agreement, it is mutually understood and agreed that Intellijoint is at all times acting and performing as an independent contractor with, and not an employee or joint venturer of, Customer.
- 8.2 **Survival:** The provisions that by their nature are intended to survive the termination or expiration of this Agreement including shall continue to be in effect after the termination or expiration of the Agreement.
- 8.3 **Severability:** Should any provision of this Agreement be deemed illegal or unenforceable, the remainder shall nonetheless be given full force and effect.
- 8.4 **Assignment:** Neither Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the non-assigning Party, except that the Intellijoint may assign its rights and obligations under this Agreement to an Affiliate without Customer's approval. For purposes of this Agreement, an Affiliate means the Intellijoint and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Intellijoint. In the event of a change of control, the rights and obligations of the Party having the change of control shall transfer to the party assuming control. If and to the extent that a Party assigns any of its rights or obligations hereunder in accordance with this Section, then this Agreement shall be binding upon the assignee to the same extent as if it were a Party hereto, and each reference herein to the name of the assigning Party shall be deemed to include the assignee. Any assignment not in accordance with this Section shall be void.
- 8.5 **Waiver:** No failure by any party to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every



covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

- 8.6 Dispute Resolution:** The Parties agree to use good faith efforts to negotiate a resolution to any issues, disputes or claims which may arise before resorting to any mediation, arbitration or other legal remedies. The signatories to this Agreement or their successors or designees shall endeavour to resolve any dispute arising out of connection with this Agreement or the breach, termination or validity thereof (a “Dispute”). If the signatories to this Agreement or their successors (or designees) cannot resolve the Dispute within ten (10) business days of the matter being reported to them, either Party will be entitled to start non-binding mediation proceedings. The mediation would take place the state of New York in the United States of America. Each Party shall participate in the mediation in good faith and shall bear its own expenses in doing so. Any dispute, controversy or claim arising out of or relating to this Agreement including but not limited to the possibility or existence of the proceedings, the proceedings themselves, oral statements made during the course of the proceedings, documents and other information submitted by the Parties or prepared by the mediator(s), and any settlement shall be deemed confidential information subject to the Confidentiality provision of this Agreement. Nothing in this Agreement shall be deemed to limit the Parties' rights to seek interim injunctive relief from the courts in the state of New York.
- 8.7 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of New York, and the laws of the United States of America applicable therein, without giving effect to its choice of law principles.
- 8.8 Amendment:** This Agreement may only be amended by a written instrument executed by each of the Parties hereto.
- 8.9 Notices:** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, or (c) sent by facsimile or email, with receipt of oral confirmation that such transmission has been received.
- 8.10 Counterparts:** This Agreement may be executed in counterparts each of which when executed by any of the parties shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement.

APPENDIX A

Consigned Product Terms

Overview: Customer wishes to store Consumables provided by Intellijoint Surgical at one or more facilities (“Consigned Consumables”) in order that the Consigned Consumables be readily available for use in Procedures



1. **Consignment:** The quantities of Consigned Consumables that the Customer wishes to hold at each customer facility are provided in Agreement. Should any of the Consigned Consumables be lost or damaged, Customer shall be responsible for the cost of replacement at then-current prices as may be updated from time to time.
2. **Replenishment:** Intellijoint will replenish the Consigned Consumables on a regular basis in order to maintain the quantities set out in Agreement, however, quantities actually available at a facility at any given time may be higher or lower than those stated in Agreement. If more permanent changes are required, an updated list will be provided to Customer for review and signature, which will not be unreasonably withheld, and will serve as an amended Agreement when executed.
3. **Audit:** Customer will maintain adequate records to allow Intellijoint to determine the use of the Consigned Consumables held at Customer's facility. Intellijoint reserves the right to, during regular business hours, physically audit the stocking levels and condition of Consigned Consumables held at Customer's facility. In the event that Intellijoint's audit of such Consigned Consumables concludes that either a shortfall or surplus exists, Intellijoint and Customer agree to use commercially reasonable efforts to timely account for any such discrepancy.
4. **Ownership:** Nothing in this Agreement transfers any ownership right, title or interest in the Consigned Consumables to Customer, its Affiliates, or surgeons until the Consigned Consumables are purchased by Customer for use in a Procedure. Intellijoint may at any time request the return of the Consigned Consumables and Customer shall immediately make the Consigned Consumables available for Intellijoint or its representatives to pick up.
5. **Consumption:** Upon usage of any Consigned Consumables by Customer ("Consumption"), Customer will issue to Intellijoint a purchase order for the Consigned Consumables 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 Consumables consumed. Upon receipt of the Purchase Order, Intellijoint shall submit an invoice to Customer for the Consigned Product. Such Purchase Order will also serve as notice for Intellijoint to replenish the Consigned Consumables. Customer agrees to make payment to Intellijoint consistent with the terms contained in the Agreement.
6. **Expired Products and Returns:** Unless otherwise agreed in writing, all returns of products supplied hereunder shall be coordinated with the local Intellijoint sales representative. Customer shall be responsible for removing expired Consigned Consumables from its inventory and documenting such removal. Within three business days of such removal, Customer shall contact Intellijoint to request replacement Consigned Consumables. Intellijoint, at its option, may either ship such replacement products or reduce the inventory of Consigned Consumables maintained by Customer. Intellijoint will not charge Customer for products sent to replace expired inventory unless specific replacement costs apply and are provided in writing. Intellijoint shall under no circumstances be held responsible for Customer's use of any expired Consigned Consumables and Customer shall hold harmless and indemnify Intellijoint for any and all damages arising from any such use of expired Consigned Consumables as such use is expressly contrary to the Agreement.



APPENDIX B

Extended Technical Support

1. **BACKGROUND:** This Appendix B applies to Customers that have purchased purchase Extended Technical Support (“ETS”) for certain Purchased Equipment provided under this Agreement, and Intellijoint will provide the necessary services and products required to keep said Purchased Equipment in working condition during any period in which (“ETS”) is paid for on each System.
2. **SOFTWARE UPDATES:** Intellijoint shall provide after sales service as reasonably required including providing or installing Updates (as further defined below) in order to maintain the System Software for said Purchased Equipment in good working order and in accordance with Intellijoint documentation. Updates to software, firmware and applications may include bug fixes, patches and other error corrections that enhance existing System functions and operation and that do not require hardware changes and which are made generally available to other customers (collectively, "Updates"). Updates may modify or delete in their entirety certain existing features and functionality of the System.
3. **HARDWARE COVERAGE:** In accordance with this Appendix B, Intellijoint shall provide Customer with the necessary maintenance and replacement of Components required to keep the Purchased Equipment in working condition during the Term (“Maintenance Services”). All services are ancillary to and are not a substitute for the routine maintenance of Purchased Equipment as provided by Intellijoint in its equipment and operations manuals, accompanying labels, or inserts for the Purchased Equipment. Customer covenants and agrees that its personnel will follow the instructions and contents of said manuals, labels, and inserts.
4. **NOT COVERED:** During the Term, Intellijoint may develop and offer additional products that are not currently listed in the Agreement or which provide new functionality, substantial improvements to existing functionality, or require hardware changes (“Upgrades”). Intellijoint will issue a revised Agreement, to be signed by both Parties, to incorporate Upgrades into the Agreement.
5. **DEFICIENT SERVICES:** Without limiting any other remedy which the Customer may have under the Agreement or at law, Intellijoint will, at its sole cost upon an email request from the Customer (each a “Service Request”), rectify any problems with the Purchased Equipment within forty-eight (48) Hours of each Service Request and will do all such things that may be reasonably required by the Customer to satisfy the Customer that the Purchased Equipment is in working condition. If Intellijoint cannot correct deficiencies in the Purchased Equipment within the timeframe provided above, then Intellijoint will provide a replacement system in working condition within seven (7) days of the Service Request. The replacement system will be provided until the Purchased Equipment is deemed by the Parties to be in working condition.
6. **SERVICE LIMITATIONS:** Intellijoint represents and warrants that services contemplated by this Appendix shall be performed in a workmanlike manner and with professional diligence and skill and



will comply with all applicable laws and regulations. Notwithstanding any other provision of this Appendix, the Maintenance Services shall not include repairs, exchange, or other services made necessary by or related to the following: (1) abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance; (2) a catastrophic event; (3) acts of god; (4) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Intellijoint authorized personnel; (5) Purchased Equipment on which any original serial numbers or other identification marks have been removed or destroyed; (6) Purchased Equipment that has been repaired with any unauthorized or non-Intellijoint components; or (7) any loss or misplacement by Customer of the Purchased Equipment. To the fullest extent permitted by law, the express warranties set forth in this section are the only warranties applicable to the services provided under this Appendix. Any additional warranties and limitations are provided under the Agreement.

7. **TERMINATION:** Any prepaid fees are non-refundable. Intellijoint reserves the right to terminate this Appendix if the Purchased Equipment is repaired with non-Intellijoint components or by non-Intellijoint authorized personnel.
8. **CUSTOMER OBLIGATIONS:** Customer shall use reasonable efforts to cooperate with Intellijoint in connection with Intellijoint's performance of this Appendix C (e.g., entry to premises and access to Purchased Equipment). Customer understands and acknowledges that Intellijoint employees will not provide surgical or medical advice, will not practice surgery or medicine, will not come in physical contact with the patient, will not enter the "sterile field" at any time, and will not direct equipment or instruments that come in contact with the patient during surgery. Customer's personnel will refrain from requesting Intellijoint employees to take any actions in violation of these requirements or in violation of applicable laws, rules or regulations, Customer policies, or the patient's informed consent. A refusal by Intellijoint employees to engage in such activities shall not be a breach of the Agreement. Customer is to make every reasonable effort to clean and disinfect equipment prior to providing it for maintenance or inspection. Intellijoint reserves the right to deny service until the Purchased Equipment is offered in a safe and sterile condition.

