

SINGLE SITE PRODUCT PRICING AGREEMENT

This **SINGLE SITE PRODUCT PRICING AGREEMENT** and any attached and referenced Schedules (collectively, the "Agreement") is between the County of San Mateo on behalf of San Mateo Medical Center, located at 222 W. 39th Avenue, San Mateo, CA 94403 ("Customer"), and Howmedica Osteonics Corp., a New Jersey corporation with a place of business at 325 Corporate Drive, Mahwah, NJ 07430 ("Company") (each, a "Party" and collectively, the "Parties").

BACKGROUND:

Company manufactures and sells certain medical device and/or biologics products. Customer owns and operates a hospital. Customer wishes to purchase products at the prices and subject to the terms, conditions and assurances set forth herein.

The Parties therefore agree as follows:

1. Definitions. "Products" has the meaning set forth in Schedule A.
2. Term. This Agreement is effective as of January 1, 2017 (the "Effective Date"), and shall continue through December 31, 2019.
3. Products and Prices for the Products. Only Products expressly covered by Schedule A and purchased under this Agreement are eligible for the pricing in this Agreement. Product pricing shall be as set forth on Schedule A. Product pricing (including any price concessions set forth on Schedule A) is contingent upon Customer's compliance with all terms and conditions set forth in this Agreement including, but not limited to, those set forth in Schedule A and the requirement to pay outstanding invoices as set forth in the below section entitled "Invoices/Payments." If Customer does not meet a term or condition, pricing for the Products shall upon 30 days' notice revert to the Company's published price list then in effect (without any price concessions), and Customer agrees to pay in accordance with that published price list. If and when Company confirms its compliance with such terms and conditions, then during the period of such compliance, pricing (and any price concessions) shall again be as set forth on Schedule A on a prospective basis.
4. Product-Related Services. As generally made available by Company to similar customers at no additional cost, Company will provide to Customer, at no additional cost, relevant surgical techniques, product information and other educational information that are closely related to the Products being sold herein and useful in connection with the proper use of the Products.

Company agrees to provide technical training, including both initial training for new users and supplemental training for existing users, as needed to promote the safe and effective use of the products sold under this Agreement. Such technical training shall be provided for any health care practitioner who uses or intends to use the product and is employed by, or is on the active medical staff of, the Customer. If Company provides the technical training to a health care practitioner, it may pay for or reimburse the reasonable expenses, including meals, lodging and transportation, actually incurred by eligible recipients in connection with the technical training provided under this paragraph.
5. Purchase Orders. For Products being directly purchased from Company, Customer must submit to Company written purchase orders for such Products prior to the shipment of such Products. For any Product held by Customer on a consignment, bailment or loaner basis, Customer must submit to Company a written purchase order for such Products within 48 hours after the withdrawal from consignment, bailment or loaner inventory of such Product.
6. Shipment and Delivery. Except for those Products purchased on a consignment basis as set forth in Schedule B, all Products purchased directly from Company are shipped F.O.B. shipping point, freight prepaid and added to the invoice.
7. Invoices/Payments. Upon shipment of Products to Customer (or in the case of consignment as set forth in Schedule B, upon receipt of Customer's purchase order as discussed in Schedule B), Company will submit to Customer an invoice for such Products, and Customer must pay in full invoices within 30 days from the date of invoice. In the event Customer wishes to dispute an invoice or portion thereof, Customer must notify Company in writing within 15 days of its receipt. The writing must provide Company with sufficient detail regarding the basis and amount of the dispute. If Customer does not dispute an invoice within 15 days of its receipt of same, the invoice will be deemed to have been approved by Customer.

In no event shall the County's total fiscal obligation under this Agreement and under all other agreements approved collectively by the single Resolution authorizing this agreement exceed THREE MILLION DOLLARS

(\$3,000,000).

8. Reporting.

- a. Company, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make required reports (including reporting on net prices paid for items supplied hereunder) under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)).
- b. Customer will meet with Company at least semi-annually to review (i) volume, market share and other conditions on which pricing under this Agreement is predicated; (ii) payment records reflecting timeliness and amounts paid to Company under all provisions of this Agreement; (iii) aggregated and blinded payment records reflecting purchases from and payments to other vendors of products similar to or the same as the Products; (iv) purchase order information; and (v) all other material aspects of the Parties' performance under this Agreement. Customer will provide accurate and complete data to Company as reasonably requested by Company to permit Company to verify the basis for discount pricing to Customer.

9. WARRANTY. ANY WARRANTIES PROVIDED BY COMPANY WITH RESPECT TO A GIVEN PRODUCT ARE AS DESCRIBED IN THE LABELING ACCOMPANYING UNITS OF THAT PRODUCT ON PURCHASE. COMPANY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE PRODUCTS INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO INSTANCE WILL COMPANY BE LIABLE TO CUSTOMER FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

10. Indemnity. Company agrees to indemnify Customer from any third party liability and/or damages which Customer may suffer directly as a result of a defect in workmanship or design of the Products. This indemnification applies only if the instructions outlined in the Product's labeling, manual, and/or instructions for use are followed. This indemnification does not apply to liability and/or damages arising from: (i) an injury due to the negligence of any person other than an employee or agent of Company; (ii) the failure of any person other than an employee or agent of Company to follow any instructions for use of the Product; or (iii) the use of any product not purchased from Company, or Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Company. Company is not responsible for any losses or injuries arising from the selection, manufacture, installation, operation, condition, possession or use of the Products. Customer agrees to hold Company harmless and indemnify Company against any claims or losses or injuries arising from (i), (ii), or (iii) above resulting from the negligence or willful misconduct of any employee or agent of Customer.

11. Insurance.

- a. Company will maintain adequate general liability insurance, including coverage for Products and completed operations, auto liability insurance and workers compensation and employer's liability insurance to cover liability arising out of this Agreement, including Products purchased by Customer from Company under the Agreement. To the extent permitted by law, Company has the right to self-insure to comply with this requirement. When requested by Customer, Company will furnish an insurance certificate signed by an authorized agent evidencing the above referenced insurance coverage.
- b. Customer shall maintain adequate insurance to cover liability arising out of this Agreement, including liability arising out of Customer's indemnity obligations set forth in Section 10 above. To the extent permitted by law, Customer has the right to self-insure to comply with this requirement. Upon request by Company, Customer will provide a certificate of insurance evidencing such coverage.

12. Termination, Effect. Either Party may terminate this Agreement at any time, without cause, by giving 30 days' advance written notice to the other Party. All accrued rights or responsibilities will survive termination or expiration of this Agreement. Upon termination or expiration of this Agreement, Customer shall, within ten days, pay Company all amounts owed pursuant to this Agreement. In the event of such termination without cause, the terminating party shall be required to pay the non-terminating party an amount equal to ten percent (10%) of Customer's total Product purchases for the twelve (12) month period immediately preceding such termination. The parties agree that such ten percent (10%) payment represents a reasonable estimate of the diminution in value to the non-terminating party and does not constitute a penalty. Any payment required under this Section 12 shall be made within ten (10) days following the effective date of such termination.

13. Confidentiality. Except to the extent Customer is required by law to disclose certain information related to this Agreement, Company and Customer: (a) shall hold in confidence this Agreement and the terms and conditions contained herein (including, without limitation all terms relating to Product pricing) and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or

otherwise, or which a reasonable person would consider to be proprietary or confidential information; (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates; and (c) agree that any breach or threatened breach of this section would cause irreparable harm to the disclosing party, that a remedy at law will be inadequate to remedy any such breach or threatened breach, and that this section shall be enforceable by way of a restraining order or injunction. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.

14. Miscellaneous.

- a. No Party shall be liable for failure of or delay in performing obligations set forth in this Agreement, and no Party shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably beyond the control of such Party.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey and the Parties consent and agree that any and all litigation arising from this Agreement will be conducted by state or federal courts located in State of New Jersey, and Customer consents to the jurisdiction of the New Jersey courts in such an event.
- c. This Agreement shall inure to the benefit of, and be binding upon, Customer and Company and their respective successors and assigns. Customer represents to Company that it is duly authorized to execute this Agreement. Neither Party may assign any of its rights or obligations under this Agreement, either voluntarily or involuntarily, without the prior written consent of the other Party. Any purported assignment in violation of the preceding sentence will be void.
- d. Any notice required under this Agreement shall be in writing, sent by registered mail, postage prepaid, and addressed to the Parties at their respective addresses as first set forth above.
- e. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior negotiations and agreements between the Parties concerning the subject matter of this Agreement, including any group purchasing agreements to which Customer may be a party. This Agreement may only be amended by written agreement of the Parties. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, consignment agreement or similar document relating to the purchase of any units of any Product, this Agreement will control.
- f. The Warranty, Liability, Confidentiality and Miscellaneous provisions of this Agreement shall survive its termination or expiration.

15. Equal Benefits Ordinance. Howmedica Osteonics Corp. shall comply with all applicable laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Howmedica Osteonics Corp. employee is of the same or opposite sex as the employee.

IN WITNESS WHEREOF, each Party has executed and delivered this Agreement as of the date respectively set forth underneath such Party's name below.

COMPANY:

HOWMEDICA OSTEONICS CORP.

By: Rick Kalinowski III

Name: Rick Kalinowski III

Title: West National Accounts

Date: 2/22/2017

CUSTOMER:

COUNTY OF SAN MATEO

By: _____

Name: _____

Title: _____

Date: _____

Schedule A - Products and Pricing

A. Product. Any product not listed on Schedule A and/or introduced after the date of this signed agreement will be negotiated separately and agreed to in writing by both parties prior to its sale. "Product" means all items/the following categories of items listed in Table 1 of this Schedule A. Except as otherwise set forth herein, neither Party shall unilaterally make a demand to either increase or decrease Product pricing during the term of this Agreement.

B. Performance Requirements and Prices. The prices for Products are set forth in the Table 1

Table 1

Surgery	Implant	Option	Includes	SYK Proposed
Fracture Hips	Fracture Stem	Fracture	Hip Fracture Stems (Accolade HFX, Omnifit HFX)	\$1,250
	Head	Unipolar	Unipolar Partial Hip Heads (Unitrax)	\$750
Total Primary Hips	Primary Stem	Bipolar	Bipolar Partial Hip Heads (UHR)	\$750
		Cemented	Primary Cemented Stems (Accolade C, Omnifit EON)	\$1,750
		Cementless	Primary Cementless HA Coated Stems (Accolade IMZ+, SecureFit Max)	\$2,900
		SOMA Design	2nd Generation Stems (Accolade II or SecureFit Advanced)	\$2,900
	Acetabular Shell/Cup	Trident	Trident HA Coated Shells (Cluster, Multi, Solid Back)	\$1,050
		All Poly	Cemented All Poly Shells	\$1,050
		Tritanium	Tritanium 3D HA Coated Shells	\$1,500
		ADM	ADM Mobile Bearing	\$1,750
	Head	Standard Metal	Metal Standard Diameter Femoral Heads	\$650
		36mm Metal	36mm Metal Femoral Heads	\$650
		XL Metal	All Large Diameter (40mm-44mm) Metal Femoral Heads	\$1,250
		Ceramic	Ceramic Femoral Heads (Alumina or BioloX Delta)	\$1,250
	Insert	Crossfire	Crosslinked	\$1,000
		X3	X3 Sequentially Crosslinked	\$1,250
		Ceramic	Ceramic Inserts (Alumina)	\$1,250
		ADM	Mobile Bearing X3 Poly	\$1,500
	Mobile Bearing Liner	MDM	Mobile Bearing MDM Metal Liner	\$1,500
Primary Knees	Femoral Component	Scorpio	Scorpio Cemented Femurs	\$1,250
		NRG	Scorpio NRG Cemented Femurs	\$2,000
		Triathlon	Triathlon Cemented Femurs	\$2,000
		Scorpio Cementless	Scorpio Cementless Femurs	\$2,750
		Cementless	Cementless Femurs (Triathlon or Scorpio)	\$2,750
	Tibial Baseplate	Cemented	Cemented Tibial Baseplates	\$1,260
		Universal	Total Stabilized Tibial Baseplates	\$1,500
		Cementless	Cementless Tibial Baseplates	\$1,500
		Tritanium	Triathlon Tritanium Tibial Baseplates	\$1,500
	All Poly Tibial Baseplate	All Poly	Triathlon All-Poly Tibial Baseplate & Insert Combo	\$1,200
		Scorpio All Poly	Scorpio All-Poly Tibial Baseplate & Insert Combo	\$900
	Tibial Insert	N2Vac	Crosslinked (N2Vac)	\$1,000
		X3	X3 Sequentially Crosslinked	\$1,250
	Patella	N2Vac	Crosslinked (N2Vac)	\$500
		Metal Backed	Tri Beaded w/ PA Metal Backed	\$700
		X3	X3 Sequentially Crosslinked	\$700
		Tritanium	Tritanium Metal Backed	\$700
		Insert	Triathlon PKR Cemented Unicondylar Femurs	\$2,000
Partial Knees	PKR Unicondylar	Tibia	Triathlon PKR Cemented Tibial Baseplates	\$1,250
		Insert	Triathlon PKR X3 Sequentially Crosslinked	\$1,360

Hip & Knee Other	Includes Hip Revisions	15%
	Includes Knee Revisions	15%
	Includes Oncology	10%
	Includes Hip Ancillary Items (Adapters, Bone Plugs, Distal Spacers, Centralizers)	15%
	Includes Knee Ancillary items (Triathlon Vitallium Screws)	15%
	Includes Bone Screws	15%
	Includes Specialty Pins (Femoral Fixation Pegs, Pinaball Pins and Sterile Fluted Pins)	15%
	Includes Unitrax Sleeves	\$100
	Includes Hip Instruments	15%
	Includes Knee Instruments	15%
New Technology	All new items introduced during the length of the contract would be mutually agreed on prior to being used otherwise it would default to the current Recon revision discount.	

Discounts are off Current Price Book Time of Sale

- C. Wasted Products.** Notwithstanding anything to the contrary contained in this Agreement, the price to be paid by Customer to Company for any Product that is withdrawn by Customer from consignment, bailment or loaner inventory, if any, and opened, but not implanted into a patient or otherwise used in connection with a procedure, will be discounted by 50% off of Company's published list price for such Product as in effect at the time of the wasting of such Product.
- D. Instrumentation.** Company shall provide certain of its non-disposable orthopaedic surgical instruments ("Instrumentation") to Customer as follows:
- 1) The quantity of Instrumentation shall be as mutually agreed to by Customer and Company.
 - 2) Customer shall have no ownership interest in the Instrumentation; however, Customer is responsible for maintaining the Instrumentation in good condition and for using reasonable care in its handling and storage. Customer shall be responsible for any loss of or damage to the Instrumentation. Upon expiration or termination of this Agreement, Instrumentation shall be removed from Customer and returned to Company at Company's expense.
 - 3) Instrumentation shall be provided by Company on a loaned basis at no additional cost or expense to Customer except as noted in the preceding paragraph. The Instrumentation provided is restricted for use with the Products only and is not separately reimbursable and has no independent value. Customer shall maintain appropriate property insurance on the Instrumentation during the term of this Agreement to provide coverage against loss by theft, fire damage, acts of nature or other cause. Upon request by Company, Customer will provide a certificate of insurance evidencing such coverage, which will name Company as a named insured and loss payee, as its interests may appear. Upon expiration or termination of this Agreement, Customer shall, within ten days, deliver as directed by Company all Instrumentation then in its possession or control.

Schedule B - Consignment

In the event Company chooses to provide Customer with an option to consign Products, such consignment arrangement is conditioned on and subject to the following:

- A. Company will place at Customer's facility on a consignment basis, such quantities and types of Product as the Customer and Company may mutually agree upon (collectively, the "Consigned Inventory"). Such initial quantities and types will be set forth in a document provided by Company and attached to this Agreement as Schedule C-1. On a going forward basis, Company and Customer will update the Consigned Inventory levels on a form provided by Company and signed by Customer. Customer must provide appropriate space to store and safeguard the Consigned Inventory.
- B. All Consigned Inventory is the property of Company until withdrawn at Customer's facility; however, Customer accepts all risk of loss and full responsibility for the condition of, any shortages in and the payment for all Consigned Inventory which may be used, opened, lost, or damaged. Customer must return to Company all damaged Consigned Inventory, and Company will arrange to have the damaged items destroyed. Customer must use reasonable efforts to (i) identify all Consigned Inventory as being the property of Company, (ii) separate Consigned Inventory from other property of Customer, and (iii) maintain complete and accurate records concerning the Consigned Inventory.
- C. Customer, in its sole discretion, will determine whether to withdraw items of Consigned Inventory. As a Product is withdrawn from the Consigned Inventory, the Product shall be deemed to have been purchased by Customer, title in the Product shall pass to Customer and title in the sale proceeds shall vest in and belong to Company. Within two days from the withdrawal from consignment of any Consigned Inventory, Customer must issue to Company a hard copy of a purchase order for such withdrawn items. In the event Customer fails to issue a purchase order to Company, Company, at its option, may place Customer on credit hold and remove Consigned Inventory from Customer's premises.
- D. Company may audit (including a physical inventory) the consignment arrangement during business hours upon 72 hours notice to Customer. In the event that Company's audit of the Consigned Inventory at the Customer concludes that inventory is missing, Customer agrees that it shall pay to Company any monies which are due and owing based on the missing inventory. In the event that Company's audit of the Consigned Inventory at the Customer concludes that a surplus exists, Company will adjust consignment inventory levels to reflect the amount as determined by the audit. Customer and Company agree to meet within 15 days after an audit of the inventory has been taken by Company, to resolve whether a surplus or a shortfall exists.
- E. Upon notice or expiration or termination of the Agreement, Customer shall, within ten days, deliver as directed by Company all Consigned Inventory then in its possession or control.
- F. Company reserves the right to file UCC financing statements to protect Company's interests in the Consigned Inventory, and, as may be reasonably requested, Customer agrees to execute documents in this regard.