

**CONFIDENTIAL**

**MONITOR AGREEMENT**

This Monitor Agreement (this "Agreement"), entered into this 16<sup>th</sup> day of June, 2015, by and between Zimmer Holdings, Inc. and Biomet, Inc. ("Respondents") and CRA International, Inc. ("CRA") for the services of Dr. Gregory K. Bell ("Monitor") (together, the "Parties"), provides as follows:

WHEREAS, the Federal Trade Commission (the "Commission"), in In the Matter of Zimmer Holdings, Inc., LVB Acquisition, Inc., and Biomet, Inc., has accepted or will shortly accept for Public Comment an Agreement Containing Consent Order incorporating a Decision and Order (the "Order"), which, among other things, requires Respondents to divest Zimmer's ZUK Business and Biomet's Discovery Business and Cobalt Business in the United States, as defined in the Order, and contemplates the appointment of a Monitor to monitor Respondents' compliance with their obligations under the Order;

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Order and appoint Monitor pursuant to the Order to monitor Respondents' compliance with the terms of the Order, and Monitor has consented to such appointment;

WHEREAS, the Order further provides that Respondents shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Order;

WHEREAS, this Agreement, although executed by Monitor and Respondents, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondents or Monitor under the Order, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Order.

**ARTICLE I**

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Order, including but not limited to: (a) the power and authority to monitor Respondents' compliance with the divestiture and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission; (b) serve at least until the latter of (i) the end of the last supply agreement entered into pursuant to Paragraphs II.E., III.E., and IV.E. of the Order, and (ii) the end of the last Transition Services Agreement entered into pursuant to Paragraph II.G., III.G., and IV.G. of the Order.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Respondents' personnel, to include those employees designated to be transferred to an Acquirer, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondents' compliance with the obligations of Respondents under the Order in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondents shall cooperate with any reasonable request of Monitor. Monitor shall give Respondents reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondents' operations. At the request of the Monitor,

Respondents shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondents who have knowledge relevant to the proper discharge of its responsibilities under the Order.

1.3 Compliance Reports. Respondents shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) days after the date on which Respondents file such report with the Commission.

1.4 Monitor's Obligations. Monitor shall:

(a) carry out the Monitor's duties and responsibilities, including submission of periodic reports, and such additional written reports as may be requested by the Commission staff, to the Commission staff regarding Respondents' compliance with the Order;

(b) maintain the confidentiality of all confidential information, including Confidential Business Information as defined in the Order, and any other information provided to the Monitor by the Respondents, the Acquirers of Zimmer's ZUK Business and Biomet's Discovery Business and Cobalt Business in the United States, any supplier or customer of Respondents, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to: (i) persons working with Monitor under this Agreement; or (ii) persons employed at the Commission;

(c) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which Respondents will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(d) maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom Confidential Information related to this Agreement has been disclosed;

(e) for a period of five (5) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information, including Confidential Business Information, relating thereto; and

(f) Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with the Respondents' request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor.

## ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondents, and with the consent of Respondents, with such consent not to be unreasonably withheld, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Order.

2.2 Monitor Compensation. Respondents will pay CRA for Monitor's services in accordance with the fee schedule attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the Commission-approved Acquirers of Zimmer's ZUK Business and Biomet's Discovery Business and Cobalt Business in the United States, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time. Such hourly rates should be reviewed and may be adjusted by agreement with Respondents, with such agreement not to be unreasonably withheld, on an annual basis.

(a) In addition, Respondents will pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Order; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to Article 2.1.

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Monitor's Indemnification. Respondents shall be liable to indemnify and hold harmless Monitor and CRA against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by Monitor or CRA.

2.4 Disputes. In the event of a disagreement or dispute between Respondents and Monitor concerning Respondents' obligations under the Order, and, in the event that such disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division, whose determination shall be final with respect to all such matters.

2.5 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware that it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor of its duties under this Agreement, Monitor shall promptly inform Respondents and the Commission of any such conflict or potential conflict.

### ARTICLE III

3.1 Termination. This Agreement shall terminate on the earlier of: (a) the expiration or termination of the Order; (b) Respondents' receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondents and to the Commission, upon resignation of the Monitor; or (d) when Respondents' last obligation under the Order that pertains to Monitor's service has been fully performed; provided, however, that the Commission may require that Respondents extend this Agreement as may be necessary or appropriate to accomplish the purposes of the Order. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Order, Respondents shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Order.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of New York, including all matters of construction, validity and performance. The Order shall govern this Agreement and any provisions herein which conflict or are inconsistent with the Order may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require Respondents to disclose any material or information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by Respondents, CRA or Monitor without the consent of Respondents and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Order.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Order.

3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Order incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

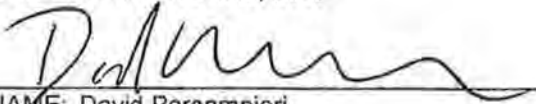
3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

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



**CRA INTERNATIONAL, INC.**



NAME: David Persampieri

TITLE: Vice President

**MONITOR**



NAME: Dr. Gregory K. Bell

**RESPONDENTS**

**Zimmer Holdings, Inc.**

NAME: Chad F. Phipps

TITLE: Senior Vice President, General Counsel and Secretary

**Biomet, Inc.**

NAME: Jonathan Grandon

TITLE: Senior Vice President and General Counsel

**CRA INTERNATIONAL, INC.**

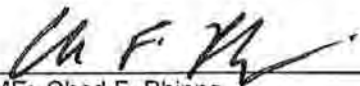
NAME: \_\_\_\_\_  
TITLE: Vice President

**MONITOR**

NAME: Dr. Gregory K. Bell

**RESPONDENTS**

**Zimmer Holdings, Inc.**

  
NAME: Chad F. Phipps  
TITLE: Senior Vice President, General Counsel and Secretary

**Biomet, Inc.**

NAME: Jonathan Grandon  
TITLE: Senior Vice President and General Counsel

**CRA INTERNATIONAL, INC.**

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: Vice President

**MONITOR**

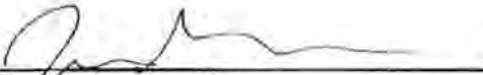
\_\_\_\_\_  
NAME: Dr. Gregory K. Bell

**RESPONDENTS**

**Zimmer Holdings, Inc.**

\_\_\_\_\_  
NAME: Chad F. Phipps  
TITLE: Senior Vice President, General Counsel and Secretary

**Biomet, Inc.**

  
\_\_\_\_\_  
NAME: Jonathan Grandon  
TITLE: Senior Vice President and General Counsel

**Confidential Appendix A**

