

CAMS-Knee Project End User Sub-licence Agreement

between

Charité – Universitätsmedizin Berlin

Charitéplatz 1, 10117 Berlin, Germany

responsible department: Julius Wolff Institute (JWI), located at: Augustenburger Platz 1, 13353 Berlin

Principal Investigator: Dr.-Ing. Philipp Damm

(hereinafter referred to as “**Licensor**”)

And

Institution Name in full: _____

Principal Investigator: _____

(hereinafter referred to as “**Licensee**”)

Collectively called the “Parties” or individually the “Party”

Preamble

Licensor has developed a unique database of kinematics and kinetics that contains information on knee joint loading, implant kinematics by means of videofluoroscopy, whole body kinematics based on skin markers, ground reaction forces and EMG muscle activity (“**Kinematics and Kinetics**”), the goal of which is to provide all researchers and industries in the field of orthopaedics and biomechanics a reliable and accurate resource for model validation and research of the human musculoskeletal system (hereinafter “**CAMS-Knee Project**”).

Further, Zimmer Biomet has agreed to provide specific product information (hereinafter “CAD Models”) for use within the CAMS-Knee Project.

The Licensee wishes to acquire rights in the **CAMS-Knee Project** to use in a defined research project (“**Project**”) approved by the Licensor, all in accordance with the terms of this licensing agreement (“**Agreement**”).

1 Definitions

CAD models	Digital geometrical models issued by Zimmer Biomet to be used solely together within the CAMS-Knee project
CAMS-Knee Data	Data gathered by ETH and Charité regarding the kinematics and kinetics within the CAMS-Knee Project .
CAMS-Knee Database	Shall mean the CAMS-Knee Data compiled by ETH and Charité and includes the Zimmer Biomet CAD models. The Licensor has the sole rights to license the CAMS-Knee Database.
Effective Date	Shall be defined as the date of the last signature of the Parties on this Agreement.
License	Shall be defined as the rights granted by the Licensor under the terms of this Agreement.
Principle Investigator	Shall be defined as the scientist responsible for the management and execution of the Project.
Project	Shall be the project as defined digitally as online information as part of the CAMS-Knee Project application in accordance with Appendix A of this Agreement, and agreed upon by the Licensor.

2 Grant of License

Subject to the terms of this Agreement, Licensor grants Licensee a non-exclusive, royalty-free, non-sub-licensable, non-assignable license to the CAMS-Knee Database under the rights of copyright to display and use the CAMS-Knee Database for the sole purpose of the Project and only within their laboratory.

The Licensee is not entitled to sell, sublicense, or otherwise proliferate the CAMS-Knee Database.

Licensor is at no time under any obligation to provide any kind of software to use, display, or analyse data from the CAMS-Knee Database. It is understood and agreed that it is the sole and exclusive responsibility of the Licensee to utilize appropriate software to display or analyse data from the CAMS-Knee Database.

3 Obligations of the Licensee

Licensee has the right to use the CAMS-Knee Data within the scope of this Agreement under the following conditions.

Licensee shall:

- (i) use the CAMS-Knee Data solely for the performance of the defined Project;
- (ii) use the CAMS-Knee Data solely at Licensee's institutional facilities;
- (iii) not use the CAMS-Knee Data for commercial purposes or profit;
- (iv) not sub-license, make available, market, sell, offer for sale, rent, lease, or loan the CAMS-Knee Database in whole or in part to a different facility or organizational unit of the Licensee or to any third party;
- (v) agree to the publication of the following items on the CAMS-Knee Website to be seen only by other CAMS-Knee licensees: name of the principal investigator, name of the institution and project title.
- (vi) acknowledge the sources of the CAMS-Knee Database (represented by the Laboratory for Movement Biomechanics of ETH Zurich, and the Julius Wolff Institute of Charité – Universitätsmedizin Berlin) in any publication reporting use of it. A copy of the complete citation and/or reference of all scientific papers and any kind of report that is for public or general release that uses CAMS-Knee Data from the CAMS-Knee Database must be made available to the licensor immediately upon release for dissemination on the CAMS-Knee website;
- (vii) shall not decompose or reverse engineer the CAD-Model(s);
- (viii) destroy the CAMS-Knee Database once the Project is completed and confirm the destruction in writing to the Licensor.

4 Obligations of the Licensor

The Licensor shall, for the duration of this Agreement make any relevant updates to the CAMS-Knee Database available to the Licensee via the CAMS-Knee website.

5 Confidentiality

The Licensee shall hold confidential all the contractual Know-how that was made available by the Licensor in the course of the execution of this Agreement, as well as any and all supplementary communicated data, documents and information transferred, even if they have not been explicitly defined as being secret or confidential. This confidentiality obligation also continues to be valid subsequent to an ordinary or extraordinary termination or expiration of this Agreement. The Licensee shall oblige its employees, to comply with the same confidentiality obligation.

The above confidentiality obligation of the Licensee shall not apply to information for which the Licensee can demonstrate upon request that the information:

- (i) has been known to the general public prior to disclosure by the Licensor or becomes public domain thereafter;

- (ii) came to the knowledge of the Licensee through a third party which obtained such information without breach of any agreement or contract and which was or is authorized to have such information or which obtained such information by an authorized party;
- (iii) has been known by the Licensee prior to communication or disclosure by the Licensors.

6 Warranty and liability

6.1 It is agreed and understood that the CAMS-Knee Database, including the CAD models (see Appendix B) is provided “as is” and the Licensors make no representations or warranties of any kind, expressed or implied. By way of example, but without limitation, the Licensors make no representations or warranties of merchantability, or fitness for any particular purpose or that the functions contained in the CAMS-Knee Database will meet Licensee’s requirements. Furthermore, the Licensors do not warrant or make any representations regarding the use or the results of the use of the CAMS-Knee Database in terms of correctness, accuracy, reliability, or otherwise or that defects in the CAMS-Knee Data will be corrected.

Licensors have not performed any searches or investigations into the existence of any third-party rights that may affect the use of the CAMS-Knee Database. Licensors do not give any warranty that the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any third party.

The above provisions regarding representations and warranties also apply, to the extent possible, to information regarding ideas, sources of materials, customer lists, formulas, files, drawings, specifications, patterns, devices, inventions, processes, methods, tools, materials, equipment, technology, documentation, printouts, reports, evaluation and/or other information on the CAMS-Knee Database (“Know How”).

6.2 The Licensee acknowledges and agrees that the use of the CAMS-Knee Database and the CAMS-Knee Data therein is at the Licensee’s sole risk. The Licensors shall not be liable for any direct or indirect damages, including but not limited to damages resulting from the use of the CAMS-Knee Database or the results generated through the use of the CAMS-Knee Database. In the event of a statutory liability of the Licensors for third party damages, Licensee shall indemnify and hold the Licensors harmless against any and all claims of third parties resulting from damages caused by use of the CAMS-Knee Database or the results of such use.

For direct damages incurred by the Licensee in connection with this Agreement, the Licensors are liable only if they are caused by unlawful intent or gross negligence. Any further liability shall be excluded to the extent legally admissible.

7 CAD Model License

Licensors notify the Licensee that the CAMS-Knee Data and CAMS-Knee Database include specific product information (CAD Models) provided by its manufacturer Zimmer Biomet (“CAD Model Originator”). The ownership and proprietary interest in the CAD Models belongs to the CAD Model Originator. The Licensee is aware that the confidentiality and license obligations also encompass the CAD Model(s).

Licensee shall not be entitled to sell, sub-license, or otherwise proliferate the CAD Model(s), be it directly, in software or as hard copies.

Further the Licensee accepts, to the maximum extent permitted by law, that the CAD Model Originator will not be liable to the Licensee for any direct, indirect, incidental, special, consequential, punitive, or other damages for loss of profits or business, use, data or other intangibles resulting from any error, inaccuracy or discrepancy in the CAD Model(s) or any corrective action required to be taken in respect of the CAD Model(s) by Licensor.

8 Knowledge gained in use

If either Party becomes aware of any fact, complaint or any hazard associated with the use of the CAD models that could cause or contribute to any injury, harm or dissatisfaction with the CAD models, Licensee shall use its best efforts to provide Licensor with all information which is available to Licensee with regard to such complaint in the best time limit.

Licensor maintains a quality management system that meets the requirements of the latest versions of the standards ISO 13485, of the EU Directive 93/42 EEC, Quality System Regulation (QSR) of the Food and Drug Administration (FDA), Canadian Medical Device Regulation (CMDR) requirements and all applicable standards according to the different legislations.

The Parties agree that Licensee shall do its best to notify Licensee's direct End Users of any defects, quality or performance problems in the CAD models or of other hazards associated with use of the CAD models which Licensor believes may cause injury or harm and which Licensor has notified to Licensee in writing. Any communication to the End Users or other third parties regarding performance problems in the CAD models has to be prior mutually agreed upon by the Parties.

9 Title and Ownership

Title, ownership rights, copyrights and intellectual property rights in and to the CAMS-Knee Database and the CAMS-Knee Data therein shall exclusively and fully remain with the Licensor.

10 Term of the Agreement

10.1 This Agreement enters into force on the Effective Date.

10.2 This Agreement terminates regularly upon completion of the Project.

10.3 This Agreement may be terminated by Licensee or the Licensor with two (2) months' written notice.

10.4 Any termination shall not relieve Licensee of any obligation or liability accrued under this Agreement prior to termination.

10.5 The Licensor may terminate this Agreement without previous notice upon material breach of any of the terms under this Agreement by Licensee.

11 Compliance with Applicable Laws and Regulations

The Licensee undertakes to comply with all applicable laws and regulations when implementing and/or using the CAMS-Knee Database

12 Applicable law and Place of Jurisdiction

This Agreement is subject to German law, with the exception of those provisions relating to intangible property rights, which are necessarily subject to foreign law. The place of jurisdiction shall be Berlin.

13 Final provisions

13.1 Advertising: Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, signs, symbols or other designation of either party hereto unless mutually agreed in writing.

13.2 Intellectual Property: Nothing in this Agreement is intended to be or shall be construed as a transfer of ownership of any intellectual property right owned by Licensor, including, but not limited to, patents, copyrights, trademarks, trade secrets, or other proprietary information owned by Licensor.

13.3 Duty of assistance: The Parties will provide each other promptly, to the extent possible and reasonable, any mutual assistance required to enable the Parties to exercise the rights which are conferred on them by this Agreement.

13.4 Severability clause: Should any provision of this Agreement be invalid or unenforceable or should the Agreement contain any omission, the remaining provisions shall remain valid. In the place of an invalid provision, a valid provision is presumed to be agreed upon by the Parties which comes closest to the one actually agreed upon.

13.5 Entire Agreement and amendments: This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations or understandings, either oral or written, between the Parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed by each Party.

The Parties shall not infer from this Agreement any other rights than those that are explicitly stated herein.

Address for correspondence:

Dr.-Ing. Philipp Damm, Julius Wolff Institute, Charité – Universitätsmedizin Berlin, Augustenburger Platz 1, 13353 Berlin, Germany

Appendix: Appendices referred to in this Agreement form an integral part hereto.

Licensee

Signed by the duly authorized representatives of the Parties:

I hereby declare that I am authorised to sign this licence agreement on behalf of the named institution

Signature _____

Name (Printed in capitals): _____

Title: _____

Date: _____

Full Address: _____

Country: _____

Telephone number: _____

Email address: _____

Title of Project: _____

Short description:

Appendices

Appendix A: Project Description – to be provided digitally as online information as part of the CAMS-Knee Project application