

# TERMS OF USE ORTHOBANC RESPONSIBLE PORTAL

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Version Date: February 01, 2018

## TERMS OF USE AGREEMENT

This Terms of Use Agreement (“Agreement”) constitutes a legally binding agreement made between you, whether personally or on behalf of an entity (“user” or “you”) and OrthoBanc, LLC and its affiliated companies (collectively, “Company” or “we” or “us” or “our”), concerning your access to and use of the app.orthobanc.com website as well as any other media form, media channel, mobile website or mobile application related or connected thereto (collectively, the “Website”). The Website provides the following service: Self Help OrthoBanc Portal for Responsible Parties (“Company Services”). Supplemental terms and conditions or documents that may be posted on the Website from time to time, are hereby expressly incorporated into this Agreement by reference.

Company makes no representation that the Website is appropriate or available in other locations other than where it is operated by Company. The information provided on the Website is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Company to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Website from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.

All users who are minors in the jurisdiction in which they reside (generally under the age of 18) are not permitted to register for the Website or use the Company Services.

YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT BY ACKNOWLEDGING SUCH ACCEPTANCE DURING THE REGISTRATION PROCESS (IF APPLICABLE) AND ALSO BY CONTINUING TO USE THE WEBSITE. IF YOU DO NOT AGREE TO ABIDE BY THIS AGREEMENT, OR TO MODIFICATIONS THAT COMPANY MAY MAKE TO THIS AGREEMENT IN THE FUTURE, DO NOT USE OR ACCESS OR CONTINUE TO USE OR ACCESS THE COMPANY SERVICES OR THE WEBSITE.

## SUBMISSIONS

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Website or the Company Services (“Submissions”) provided by you to Company are non-confidential and Company (as well as any designee of Company) shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## PROHIBITED ACTIVITIES

You may not access or use the Website for any other purpose other than that for which Company makes it available. The Website may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Company. Prohibited activity includes, but is not limited to:

- A. attempting to bypass any measures of the Website designed to prevent or restrict access to the Website, or any portion of the Website
- B. attempting to impersonate another user or person or using the username of another user
- C. criminal or tortious activity
- D. deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way making up a part of the Website
- E. engaging in any automated use of the system, such as using any data mining, robots or similar data gathering and extraction tools
- F. harassing, annoying, intimidating or threatening any Company employees or agents engaged in providing any portion of the Company Services to you
- G. interfering with, disrupting, or creating an undue burden on the Website or the networks or services connected to the Website
- H. making any unauthorized use of the Company Services, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses
- I. systematic retrieval of data or other content from the Website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission from Company
- J. tricking, defrauding or misleading Company and other users, especially in any attempt to learn sensitive account information such as passwords
- K. using any information obtained from the Website in order to harass, abuse, or harm another person
- L. using the Company Services as part of any effort to compete with Company or to provide services as a service bureau
- M. using the Website in a manner inconsistent with any and all applicable laws and regulations

## **INTELLECTUAL PROPERTY RIGHTS**

The content on the Website (“Company Content”) and the trademarks, service marks and logos contained therein (“Marks”) are owned by or licensed to Company, and are subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Company Content, includes, without limitation, all source code, databases, functionality, software, website designs, audio, video, text, photographs and graphics. All Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, common law trademarks or trade dress of Company in the United States and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

Company Content on the Website is provided to you “AS IS” for your information and personal use only and may not be used, copied, reproduced, aggregated, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Provided that you are eligible to use the Website, you are granted a limited license to access and use the Website and the Company Content and to download or print a copy of any portion of the Company Content to which you have properly gained access solely for your personal, non-

commercial use. Company reserves all rights not expressly granted to you in and to the Website and Company Content and Marks.

### **THIRD PARTY WEBSITES AND CONTENT**

The Website contains (or you may be sent through the Website or the Company Services) links to other websites ("Third Party Websites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Websites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Websites accessed through the Website or any Third Party Content posted on, available through or installed from the Website, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Websites or the Third Party Content. Inclusion of, linking to or permitting the use or installation of any Third Party Website or any Third Party Content does not imply approval or endorsement thereof by us. If you decide to leave the Website and access the Third Party Websites or to use or install any Third Party Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Website or relating to any applications you use or install from the Website. Any purchases you make through Third Party Websites will be through other websites and from other companies, and Company takes no responsibility whatsoever in relation to such purchases which are exclusively between you and the applicable third party.

### **SITE MANAGEMENT**

Company reserves the right but does not have the obligation to:

- A. monitor the Website for violations of this Agreement;
- B. take appropriate legal action against anyone who, in Company's sole discretion, violates this Agreement, including without limitation, reporting such user to law enforcement authorities;
- C. in Company's sole discretion and without limitation, refuse, restrict access to or availability of, or disable (to the extent technologically feasible) any user's contribution or any portion thereof that may violate this Agreement or any Company policy;
- D. in Company's sole discretion and without limitation, notice or liability to remove from the Website or otherwise disable all files and content that are excessive in size or are in any way burdensome to Company's systems;
- E. otherwise manage the Website in a manner designed to protect the rights and property of Company and others and to facilitate the proper functioning of the Website.

### **PRIVACY POLICY**

We care about the privacy of our users. Please review the Company Privacy Policy. By using the Website or Company Services, you are consenting to have your personal data transferred to and processed in the United States. By using the Website or the Company Services, you are consenting to the terms of our Privacy Policy.

### **TERM AND TERMINATION**

This Agreement shall remain in full force and effect while you use the Website or are otherwise a user or member of the Website, as applicable. You may terminate your use or participation at any time, for any reason, by following the instructions for terminating user accounts in your account settings, if available, or by contacting us using the contact information below.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, COMPANY RESERVES THE RIGHT TO, IN COMPANY'S SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE WEBSITE AND THE COMPANY SERVICES, TO ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION, AND COMPANY MAY TERMINATE YOUR USE OR PARTICIPATION IN THE WEBSITE AND THE COMPANY SERVICES, DELETE YOUR PROFILE AND ANY CONTENT OR INFORMATION THAT YOU HAVE POSTED AT ANY TIME, WITHOUT WARNING, IN COMPANY'S SOLE DISCRETION.

In order to protect the integrity of the Website and Company Services, Company reserves the right at any time in its sole discretion to block certain IP addresses from accessing the Website and Company Services.

Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

YOU UNDERSTAND THAT CERTAIN STATES ALLOW YOU TO CANCEL THIS AGREEMENT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF COMPANY'S THIRD BUSINESS DAY FOLLOWING THE DATE OF THIS AGREEMENT, EXCLUDING SUNDAYS AND HOLIDAYS. TO CANCEL, CALL A COMPANY CUSTOMER CARE REPRESENTATIVE DURING NORMAL BUSINESS HOURS USING THE CONTACT INFORMATION LISTING BELOW IN THIS AGREEMENT OR BY ACCESSING YOUR ACCOUNT SETTINGS. THIS SECTION APPLIES ONLY TO INDIVIDUALS RESIDING IN STATES WITH SUCH LAWS.

If Company terminates or suspends your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending your account, Company reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

## **MODIFICATIONS**

### ***To Agreement***

Company may modify this Agreement from time to time. Any and all changes to this Agreement will be posted on the Website and revisions will be indicated by date. You agree to be bound to any changes to this Agreement when you use the Company Services after any such modification becomes effective. Company may also, in its discretion, choose to alert all users with whom it maintains email information of such modifications by means of an email to their most recently provided email address. It is therefore important that you regularly review this Agreement and keep your contact information current in your account settings to ensure you are informed of changes. You agree that you will periodically check the

Website for updates to this Agreement and you will read the messages we send you to inform you of any changes. Modifications to this Agreement shall be effective after posting.

### ***To Services***

Company reserves the right at any time to modify or discontinue, temporarily or permanently, the Company Services (or any part thereof) with or without notice. You agree that Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Company Services.

## **DISPUTES**

### ***Between Users***

If there is a dispute between users of the Website, or between users and any third party, you understand and agree that Company is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release Company, its officers, employees, agents and successors in rights from claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and/or the Company Services.

### ***With Company***

All questions of law, rights, and remedies regarding any act, event or occurrence undertaken pursuant or relating to this Website or the Company Services shall be governed and construed by the laws of the State/Commonwealth of Tennessee, excluding such state's conflicts of law rules. Any legal action of whatever nature by or against Company arising out of or related in any respect to this Website and the Company Services shall be brought solely in either the applicable federal or state courts located in or with jurisdiction over Hamilton County, State of Tennessee; subject, however, to the right of Company, at the Company's sole discretion, to bring an action to seek injunctive relief to enforce this Agreement or to stop or prevent an infringement of proprietary or other third party rights (or any similar cause of action) in any applicable court in any jurisdiction where jurisdiction exists with regard to a user. You hereby consent to (and waive any challenge or objection to) personal jurisdiction and venue in the above-referenced courts. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement. Additionally, application of the Uniform Computer Information Transaction Act (UCITA) is excluded from this Agreement. In no event shall any claim, action or proceeding by you related in any way to the Website and/or the Company Services (including your visit to or use of the Website and/or the Company Services) be instituted more than two (2) years after the cause of action arose. You will be liable for any attorneys' fees and costs if we have to take any legal action to enforce this Agreement.

## **CORRECTIONS**

Occasionally there may be information on the Website that contains typographical errors, inaccuracies or omissions that may relate to service descriptions, pricing, availability, and various other information. Company reserves the right to correct any errors, inaccuracies or omissions and to change or update the information at any time, without prior notice.

## **DISCLAIMERS**

Company cannot control the nature of all of the content available on the Website. By operating the Website, Company does not represent or imply that Company endorses any blogs, contributions or other content available on or linked to by the Website, including without limitation content hosted on third party websites or provided by third party applications, or that Company believes contributions, blogs or other content to be accurate, useful or non-harmful. We do not control and are not responsible for unlawful or otherwise objectionable content you may encounter on the Website or in connection with any contributions. The Company is not responsible for the conduct, whether online or offline, of any user of the Website or Company Services.

YOU AGREE THAT YOUR USE OF THE WEBSITE AND COMPANY SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND THE COMPANY SERVICES AND YOUR USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE WEBSITE'S CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THIS WEBSITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE OR COMPANY SERVICES, (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY, AND/OR (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITE. COMPANY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND COMPANY WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

## **LIMITATIONS OF LIABILITY**

IN NO EVENT SHALL COMPANY OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA OR OTHER DAMAGES ARISING FROM YOUR USE OF THE WEBSITE OR COMPANY SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE COMPANY SERVICES DURING THE PERIOD OF THREE (3) MONTHS PRIOR TO ANY CAUSE OF ACTION ARISING.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## **INDEMNITY**

You agree to defend, indemnify and hold Company, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from and against, any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of your contributed content, use of the Company Services, and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. Notwithstanding the foregoing, Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Company, and you agree to cooperate, at your expense, with Company's defense of such claims. Company will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

## **NOTICES**

Except as explicitly stated otherwise, any notices given to Company shall be given by email to the address listed in the contact information below. Any notices given to you shall be given to the email address you provided during the registration process, or such other address as each party may specify. Notice shall be deemed to be given twenty-four (24) hours after the email is sent, unless the sending party is notified that the email address is invalid. We may also choose to send notices by regular mail.

## **USER DATA**

Our Website will maintain certain data that you transfer to the Website for the purpose of the performance of the Company Services, as well as data relating to your use of the Company Services. Although we perform regular routine backups of data, you are primarily responsible for all data that you have transferred or that relates to any activity you have undertaken using the Company Services. You agree that Company shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against Company arising from any such loss or corruption of such data.

## **ELECTRONIC CONTRACTING**

Your use of the Company Services includes the ability to enter into agreements and/or to make transactions electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY FOR SUCH AGREEMENTS AND TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO

RELATING TO THE COMPANY SERVICES, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

## **MISCELLANEOUS**

This Agreement constitutes the entire agreement between you and Company regarding the use of the Company Services. The failure of Company to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. This Agreement and your account may not be assigned by you without our express written consent. Company may assign any or all of its rights and obligations to others at any time. Company shall not be responsible or liable for any loss, damage, delay or failure to act caused by any cause beyond Company's reasonable control. If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions. There is no joint venture, partnership, employment or agency relationship created between you and Company as a result of this Agreement or use of the Website and Company Services. Upon Company's request, you will furnish Company any documentation, substantiation or releases necessary to verify your compliance with this Agreement. You agree that this Agreement will not be construed against Company by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.

## **CONTACT US**

In order to resolve a complaint regarding the Company Services or to receive further information regarding use of the Company Services, please contact Company as set forth below or, if any complaint with us is not satisfactorily resolved, and you are a California resident, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 "R" Street, Sacramento, California 95814 or by telephone at 1-916-445-1254.

OrthoBanc, LLC  
2835 Northpoint Blvd  
Hixson, TN 37343  
Email: [www.orthobanc.com](http://www.orthobanc.com)  
Phone: (888) 758-0585  
Fax: (888) 758-0586



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# GENERAL INSTRUCTIONS

## WHAT IS A TERMS OF USE AGREEMENT?

A Terms of Use Agreement is a written set of rules and regulations between two parties, the User and the Company, that the User must agree to follow in order to use the Company's website and services.

## WHEN IS A TERMS OF USE AGREEMENT NEEDED?

While Terms and Conditions are not required by law, any website, especially e-commerce or social networking websites or applications and any website or internet service provider that stores a User's personal data, should consider having Terms and Conditions.

A written set of Terms and Conditions protects the Company and acts as an instruction manual for its website. It allows the Company to explain things related to its service or product, including, among other things:

- how purchases, payment, and returns are handled
- ownership and use of content and intellectual property
- how Users must conduct themselves, including any prohibited behavior
- limitations on liability and disclaimers
- the Company's privacy policy

## WHO NEEDS A TERMS OF USE AGREEMENT?

Almost every website or application that provides a service or product has a Terms of Use Agreement.

Here are some examples of websites and apps that use a Terms of Use Agreement:

- **E-Commerce Company** - Ebay, Amazon, Target, Gap
- **Social Media Website or Application** - Facebook, Instagram, Twitter, Snapchat

- **Search Engine** - Google, Yahoo, Bing
- **Website or Application Providing a Service or Product** - YouTube, Apple, Uber
- **Gaming Website or Application** - Playstation, Pokemon Go, Candy Crush

## WHAT SHOULD BE INCLUDED IN A TERMS OF USE?

A simple Terms of Service should generally have at least the following:

- Who is the Company providing the service or product
- What is the service or product provided by the Company
- Where is the Company's website
- When will the agreement terminate
- Why might the User not be granted access to the website
- How does the User agree to accept the Terms of Service

The Company can tailor the rules and regulations, or "terms of use", according to the service or product it provides and its specific needs. The Terms of Use Agreement can be posted on the Company's website either as a browsewrap agreement or a clickwrap agreement.

## OTHER NAMES

As a reference, a Terms of Use Agreement is known by other names:

- Terms of Service Agreement
- Terms and Conditions
- User Agreement
- Statement of Rights and Responsibilities
- Disclaimer
- TOU
- ToS
- TOS
- TOC

