

## MD ORTHO SYSTEMS TERMS OF USE

These Terms of Use (“Terms”) govern your use of any MD ORTHO SYSTEMS LLC (“MDO,” “we,” “us,” or “our”) websites, applications, services, mobile applications and any other website or online service that MDO operates and that links to these Terms (collectively, the “Services”). These Terms, together with our Privacy Policy (collectively, the “Agreement”), collectively govern your use of our Services. By using our Services, you agree to accept all of the terms in the Agreement.

**Please review these Terms carefully before using the Services.** We may change these Terms or modify any features of the Services at any time. The most current version of the Terms can be viewed by clicking on the “Terms of Use” link posted at <https://public.mdortho.ai/docs/TermsOfUse.pdf>. **You accept the Terms by using the Services, and you accept any changes to the Terms by continuing to use the Services after we post the changes.**

**ARBITRATION NOTICE AND CLASS ACTION WAIVER:** YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND THAT YOU WAIVE YOUR RIGHT BOTH TO TRIAL AND TO PARTICIPATE IN A CLASS OR COLLECTIVE ACTION LAWSUIT, OR CLASS OR COLLECTIVE ARBITRATION.

**DO NOT USE THE SERVICES FOR EMERGENCY MEDICAL NEEDS. IF YOU OR YOUR LOVED ONE EXPERIENCES A MEDICAL EMERGENCY, OR YOU THINK YOU OR YOUR LOVED ONE MAY BE EXPERIENCING A MEDICAL EMERGENCY, CALL 9-1-1 IMMEDIATELY.** THE SERVICES ARE INTENDED TO BE USED TO ENABLE AUTHORIZED USERS TO COMMUNICATE WITH INDEPENDENT HEALTHCARE PROVIDERS ABOUT THEIR NON-EMERGENCY ORTHOPEDIC INJURIES. AS USED HERE, “ORTHOPEDIC” REFERS TO THAT BRANCH OF MEDICINE CONCERNED WITH THE CORRECTION OR PREVENTION OF MUSCULO-SKELETAL DEFORMITIES, DISORDERS, OR INJURIES AND ASSOCIATED STRUCTURES (SUCH AS MUSCLES, JOINTS, TENDONS AND LIGAMENTS). THE SERVICES AND ANY MEDICAL SERVICES PROVIDED BY HEALTHCARE PROVIDERS HEREUNDER ARE NOT INTENDED TO BE A REPLACEMENT OR SUBSTITUTE FOR EMERGENCY MEDICAL CARE OR MEDICAL CARE FOR SERIOUS INJURIES IN NEED OF URGENT ATTENTION OR WHERE AN AUTHORIZED USER IS IN OBVIOUS DISTRESS AND IN NEED OF MEDICAL CARE. Our services are for the diagnosis and treatment of non-emergency orthopedic injuries only. If you need emergency medical care or medical care for serious injuries, do not use MD Ortho’s services and seek immediate medical attention from a local healthcare provider or facility.

**WE OFFER OUR SERVICES “AS IS” AND WITHOUT ANY WARRANTIES. IN PROVIDING THE SERVICES, MDO DOES NOT BECOME YOUR PHYSICIAN OR ANYONE ELSE’S. ALTHOUGH PROGRAM HCPs (see definitions) ARE TRAINED HEALTHCARE PROVIDERS, MDO ITSELF IS NOT A HEALTHCARE PROVIDER AND DOES NOT GIVE MEDICAL ADVICE. THE SERVICES ARE FOR GENERAL INFORMATIONAL PURPOSES ONLY AND ARE DESIGNED TO HELP YOU CONNECT WITH AN APPROPRIATE MEDICAL**

**PROFESSIONAL FOR YOUR NEEDS. THESE SERVICES ARE NOT A REPLACEMENT FOR EVALUATION BY A LICENSED HEALTHCARE PROFESSIONAL AND THE SERVICES DO NOT CONSTITUTE PROFESSIONAL HEALTHCARE ADVICE, DIAGNOSIS, TREATMENT, SUGGESTIONS, OR RECOMMENDATIONS. MDO IS NOT RESPONSIBLE FOR ANY ACTIONS OR INACTIONS OF ANY USER, INCLUDING PROGRAM HCPs’ COMMUNICATIONS WITH USERS CONCERNING THEIR HEALTH OR MEDICAL CONDITIONS.**

### I. Definitions

a. **“Account”** means an individual user account established to access the Services.

b. **“Authorized User”** means any end user authorized to access the Services pursuant to the terms of this Agreement.

c. **“Plan Provider”** means an employer, health plan, or other organization that purchases the Services from MDO in order to make them available to Authorized Users.

d. **“Licensed State”** means a State in which the Medical Services are available to Authorized Users. If you are purchasing the Medical Services for yourself, the Licensed State(s) are specified in the webpages you access to schedule and/or pay for your appointment with a Program HCP. If you have access to the Medical Services through an agreement between MDO and a Plan Provider, the Licensed State(s) are specified in that agreement and also in the webpages you access to schedule your appointment with a Program HCP.

e. **“Medical Services”** means any diagnostic, treatment or other medical advice, care or service that is provided remotely to any Authorized User by a Program HCP while using the Services. For avoidance of doubt, Medical Services are not included in the definition of “Services” set forth in the first paragraph of these Terms.

f. **“Patient”** means an Authorized User who uses the Services to consult with a Program HCP regarding a non-emergent orthopedic injury.

g. **“Program HCP”** means an independent licensed physician or healthcare provider who uses the Services to provide Medical Services to Authorized Users remotely. Program HCPs are independent contractors of MD Ortho Physicians, PC, a supported medical practice of MDO.

h. **“Services”** is defined in the first paragraph of these Terms.

### II. No Provider-Patient Relationship

PROGRAM HCPs USE OUR SERVICES TO SHARE INFORMATION WITH YOU. NO DOCTOR/PATIENT OR LICENSED MEDICAL PROFESSIONAL/PATIENT RELATIONSHIP IS CREATED WITH MDO WHEN YOU USE OUR SERVICES. THIS IS TRUE WHETHER THE SERVICES ARE PROVIDED BY OR THROUGH THE USE OF THE SERVICES OR THE USE OF ANY OTHER COMMUNICATION METHODS FROM US OR OUR USERS. YOU MAY USE OUR SERVICES TO ESTABLISH A PROVIDER-PATIENT RELATIONSHIP WITH A PROGRAM HCP ONLY. BY USING THE SERVICES, USERS ARE RESPONSIBLE FOR DETERMINING WHETHER TO SHARE INFORMATION WITH A PROGRAM HCP AND WHETHER TO REQUEST TO ESTABLISH A PROVIDER-PATIENT RELATIONSHIP WITH THE PROGRAM HCP. PROGRAM HCPs ARE

## RESPONSIBLE FOR ACCEPTING OR DECLINING TO ACCEPT USERS' REQUESTS.

Program HCPs are licensed healthcare professionals responsible for exercising their own independent clinical judgment. We cannot and do not influence, much less control, their decisions or actions, nor are we qualified to, nor do we attempt to. We encourage Program HCP users to use our Services responsibly, but it is the individual responsibility of each Program HCP who uses our Services to understand and meet his or her professional responsibilities. We do not control the actions or inactions of any user nor of any Program HCP, we cannot guarantee the availability of any Program HCP at any particular time, we do not control and are not liable for information shared between users of the Services and Program HCPs, and we are not liable for cancelled or missed appointments, or for any inaccurate information provided by any user of the Services.

### III. Privacy

By using the Services, you consent to our processing your information consistent with our Privacy Policy, found at: <https://public.mdortho.ai/docs/PrivacyPolicy.pdf>.

### IV. Important Information about Your Use of the Services

MDO does not provide any physicians' or other Program HCP's services itself. All of the Program HCPs are independent of MDO and are merely using the Services to communicate with you. Any Medical Services, information or advice received from a Program HCP comes from the Program HCP, and not from MDO. Your interactions with the Program HCPs via the Services are not intended to, and they should not, take the place of your relationship(s) with your regular health care practitioner(s).

Neither MDO nor any of its licensors or suppliers or any third parties who promote the Services or provide you with a link to the Services shall be liable for any professional advice or Medical Services you obtain from a Program HCP via the Service nor for any information obtained through our Services. You acknowledge that your reliance on any Program HCPs or information provided by the Services is solely at your own risk and you assume full responsibility for all risk associated therewith.

MDO DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT THE TRAINING OR SKILL OF ANY PROGRAM HCPs USING THE SERVICES. MDO takes certain limited steps to verify the Program HCPs are licensed and legally authorized to provide Medical Services in the Licensed State(s). We admonish Program HCPs to perform their services in accordance with the applicable Laws of such State(s).

You are allowed to use the Services to consult with a Program HCP only when you are located in a Licensed State. You are not allowed to consult with a Program HCP when you are not in a Licensed State. You hereby certify that at the time of your encounter you are physically located in the State you have entered as your current location on the Services. You acknowledge that your ability to access and use the Services is conditioned upon the truthfulness of this certification and that the Providers you access through the Services are relying and are entitled to rely upon this certification in order to interact with you. In the event that your certification is inaccurate, you

agree to indemnify MDO and the Providers you interact with from any resulting damages, costs, or claims, including court or administrative investigation of hearing costs and reasonable attorneys' fees.

WE MAKE NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY CONTENT INCLUDED IN THE SERVICES, AND IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DECISION MADE OR ACTION TAKEN BY YOU IN RELIANCE ON ANY SUCH CONTENT. WHILE WE HOPE CONTENT FROM OUR SERVICES IS USEFUL, IT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO REPLACE PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. EXCEPT FOR MEDICAL SERVICES PROVIDED TO USERS BY PROGRAM HCPs, NOTHING STATED OR POSTED ON THE SITE OR AVAILABLE THROUGH ANY SERVICES IS INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICINE, PHYSICAL THERAPY, ATHLETIC THERAPY, OR OTHER PROFESSIONAL HEALTHCARE ADVICE, OR THE PROVISION OF MEDICAL CARE.

### V. Account Enrollment

To access the Services, you must first establish an Account by providing certain information. You agree that you will not create more than one Account, or create an Account for anyone other than yourself (with the exception of subaccounts established for minor children of whom you are a parent or legal guardian). You agree to provide true, accurate, current, and complete information on the Account enrollment form and to keep this information current and updated as needed.

You represent and warrant that you are at least 18 years of age and possess the legal right and ability, on behalf of yourself, a minor child of whom you are a parent or legal guardian, or other person on whose behalf you have the legal authority to act, to agree to these Terms of Use.

Any healthcare costs or expenses that result from and/or are related to the Medical Services are your responsibility, including but not limited to, prescriptions, durable medical equipment, diagnostic imaging, and subsequent treatment. Similarly, you are responsible for healthcare expenses if you choose to seek care and treatment from a healthcare provider after using our Services.

### VI. Prohibited Conduct

You may not access or use, or attempt to access or use, the Services to take any action that could harm us or any third party, interfere with the operation of the Services, or use the Services in a manner that violates any laws. For example, and without limitation, you may not:

- transmit any message or information under a false name or otherwise misrepresent your affiliation or your location at the time of the encounter or the origin of materials, including without limitation any diagnostic images, you transmit;
- provide information that is untrue, inaccurate, not current, or incomplete;
- transmit any message or information that is unlawful, libelous, defamatory, obscene, fraudulent, predatory of minors, harassing, threatening, or hateful;

- transmit any message or information that infringes or violates the intellectual property, privacy, or publicity rights of others;
- reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate content received through the Services to anyone else without prior express permission;
- engage in unauthorized spidering, “scraping,” or harvesting of content or personal information, or use any other automated means to compile information;
- take any action that imposes an unreasonable or disproportionately large load on our network or infrastructure;
- use any device, software, or routine to interfere or attempt to interfere with the proper working of the Services or any activity conducted on the Services or attempt to probe, scan, test the vulnerability of, or breach the security of any system or network;
- attempt to modify, translate, decipher, decompile, disassemble, reverse-engineer, or create derivative works of any of the software comprising or in any way making up a part of the Services; or
- engage in any other conduct that restricts or inhibits any person from using or enjoying the Services, or that, in our sole judgment, exposes us or any of our users, affiliates, or any other third party to any liability, damages, or detriment of any type.

Violations of system or network security may result in civil or criminal liability. We may investigate and work with law enforcement authorities to prosecute users who violate the Terms. We may suspend or terminate your access to the Services for any or no reason at any time without notice.

## **VII. Intellectual Property Rights**

The Services are protected under the copyright laws of the United States and other countries. All copyrights in the Services are owned by us or our third-party licensors to the full extent permitted under the United States Copyright Act and all international copyright laws. You may not publish, reproduce, distribute, display, perform, edit, adapt, modify, or otherwise exploit any part of the Services without our written consent.

All rights in the product names, company names, trade names, logos, service marks, trade dress, slogans, product packaging, and designs of the Services, whether or not appearing in large print or with the trademark symbol, belong exclusively to MDO or its licensors and are protected from reproduction, imitation, dilution, or confusing or misleading uses under national and international trademark and copyright laws. The use or misuse of these trademarks or any materials, except as authorized herein, is expressly prohibited, and nothing stated or implied on the Services confers on you any license or right under any patent or trademark of MDO, its affiliates, or any third party.

You expressly grant MDO, its affiliates, and their respective, permitted successors and assigns (each a “Licensee”), a nonexclusive, perpetual, irrevocable, freely transferable right and license throughout the world to use any content, image, or material you deliver or send to MDO (“Your Content”), in any and all formats and media, whether now known or later devised by any means, whether now known or later devised, for any and all purposes whatsoever. For purposes of clarity and without limiting the foregoing, You acknowledge and agree that the rights and license granted to Licensee under this license including Licensee’s rights: (a) to modify, edit, combine with other materials, translate, include in collective works, and create

derivative works of Your Content, in whole or in part; and (b) to reproduce, perform (publicly or otherwise), display (publicly or otherwise) and transmit Your Content, in whole or in part.

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MDO has the right not to use or exploit Your Content and to exercise its rights under this license through any of its employees, agents, and independent contractors

## **VIII. Password Security**

You are solely responsible for the security of your username and password, and for any use of the Services using your username and password. You may not share your username or password with any third party or allow any third party to access the Services using your username and password. You agree to notify us if you have any reason to believe that your username or password has been lost, compromised, or misused in any way. We reserve the right to revoke or deactivate your username and password at any time for any reason or no reason at all.

## **IX. Website and Third-Party Content**

The Services should not be considered medical advice. You should always consult an appropriately qualified health care professional for diagnosis and treatment, including information regarding which medications or treatment, if any, may be appropriate for you. **NONE OF THE CONTENT ON THE SERVICES REPRESENTS OR WARRANTS THAT ANY PARTICULAR MEDICATION OR TREATMENT IS SAFE, APPROPRIATE, OR EFFECTIVE FOR YOU.** MDO does not nor is it qualified to recommend or endorse any specific tests, providers, medications, products, or procedures.

The Services may provide links to third-party content. You acknowledge and agree that we are not responsible for the availability or privacy practices of such third-party content, and we do not control, endorse, sponsor, recommend, or otherwise accept responsibility for such content or privacy practices, all of which are subject to change at any time without notice to us. Use of any linked third-party content is at the user’s own risk.

## **X. Disclaimer of Warranties; Limitation of Liability**

**YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR OTHER PROTECTIONS OF RIGHTS. WE DO NOT WARRANT THE ADEQUACY, CURRENCY, ACCURACY, LIKELY**

RESULTS, OR COMPLETENESS OF THE SERVICES OR OF ANY THIRD-PARTY SITES LINKED TO OR FROM THE SERVICES, OR THAT THE FUNCTIONS PROVIDED WILL BE UNINTERRUPTED, AVAILABLE AT ANY PARTICULAR TIMES OR FROM ANY PARTICULAR LOCATIONS, VIRUS-FREE, OR ERROR-FREE. WE EXPRESSLY DISCLAIM ANY LIABILITY FOR ANY ERRORS OR OMISSIONS IN THE CONTENT INCLUDED IN THE SERVICES, MEDICAL SERVICES PROVIDED BY PROGRAM HCPs, OR ANY THIRD-PARTY SITES LINKED TO OR FROM THE SERVICES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

IN NO EVENT WILL WE, OR OUR SUBSIDIARIES, AFFILIATES, LICENSORS, SUPPLIERS OR THEIR DIRECTORS, MANAGERS, OFFICERS, AFFILIATES, SUBCONTRACTORS, EMPLOYEES, AGENTS, OR ASSIGNS, BE LIABLE FOR ANY DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, OR OTHER DAMAGES WHATSOEVER ARISING IN CONNECTION WITH THE USE OF THE SERVICES, ANY INTERRUPTION IN AVAILABILITY OF THE SERVICES, ANY DELAY IN OPERATION OR TRANSMISSION, THE EFFECTS OF ANY COMPUTER VIRUSES, WORMS, TROJAN HORSES, RANSOMWARE, OR OTHER MALWARE, LOSS OF DATA, OR USE, MISUSE, RELIANCE, REVIEW, MANIPULATION, OR OTHER UTILIZATION IN ANY MANNER WHATSOEVER OF THE SERVICES OR THE DATA COLLECTED THROUGH THE SERVICES, EVEN IF ONE OR MORE OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. THESE EXCLUSIONS APPLY TO ANY CLAIMS FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, ANY OTHER COMMERCIAL DAMAGES OR LOSSES, OR MEDICAL MALPRACTICE OR NEGLIGENCE OF HEALTHCARE PROVIDERS UTILIZED THROUGH USE OF THE SERVICES, EVEN IF WE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

YOU AGREE THAT YOUR SOLE REMEDY FOR ANY CLAIM ARISING OUT OF OR CONNECTED WITH THE SERVICES WILL BE TO CEASE USING THE SERVICES.

You acknowledge and agree that MDO is not engaged in the practice of medicine and that MDO is not determining appropriate medical use of the Services. MDO, its licensors, suppliers, and all third parties who promote the Services or provide you with a link to the Services expressly disclaim any and all liability resulting from the delivery of Medical Services via the Services, including but not limited to liability for medical malpractice or medical negligence.

#### **XI. Indemnification**

You agree to indemnify, defend and hold us and our subsidiaries, affiliates, licensors, suppliers and our and their directors, managers, officers, affiliates, subcontractors, employees, agents, and assigns harmless from and against any and all loss, demands, costs, expenses (including reasonable attorneys' fees and expenses), claims, damages and liabilities related to or associated with your use of the Services and any alleged violation by you of these Terms. We reserve the right to

assume the exclusive defense of any claim for which we are entitled to indemnification under this section. In such event, you shall provide us with such cooperation as we reasonably request.

#### **XII. Choice of Law and Forum**

##### **Important: Please Review as this Affects Your Legal Rights Related to Class Action Lawsuits and Dispute Resolution**

The Services are intended for use by residents of the United States. We prohibit and do not intentionally provide access to the Services to individuals located outside the United States. You agree that your access to and use of the Services will be governed by and will be construed in accordance with the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws.

YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING, WITHOUT LIMITATION, DISPUTES RELATED TO THIS AGREEMENT, YOUR USE OF THE SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES, AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY. NEITHER YOU NOR WE WILL PARTICIPATE IN A CLASS ACTION OR CLASS-WIDE ARBITRATION FOR ANY CLAIMS COVERED BY THIS AGREEMENT TO ARBITRATE. YOU ARE WAIVING THE ABILITY TO PARTICIPATE AS A CLASS REPRESENTATIVE OR MEMBER IN ANY CLASS OR COLLECTIVE CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS OR COLLECTIVE ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. You also agree not to participate in claims brought in a private attorney general or representative capacity, or to consolidated claims involving another person's account, if we are a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use or the Agreement.

#### **XIII. Miscellaneous**

These Terms constitute the entire agreement between you and us, superseding any prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us. Except as otherwise expressly stated herein, the parties do not intend to create any enforceable rights in any third party under this Agreement and there are no third party beneficiaries to this Agreement. All of the provisions in Sections II, IV, V, VIII, X, XI, and XII, as well as any other provisions that by their nature should survive, shall survive any termination or expiration of the term of this Agreement.

In the event any provision of these Terms is held unenforceable, it will not affect the validity or enforceability of the remaining provisions and will be replaced by an enforceable provision that comes closest to the intention underlying the unenforceable provision. You agree that no joint venture, partnership,

employment, or agency relationship exists between you and us as a result of these Terms or your access to and use of the Services.

Our failure to enforce any provisions of these Terms or respond to a violation by any party does not waive our right to

subsequently enforce any terms or conditions of the Terms or respond to any violations. Nothing contained in these Terms is in derogation of our right to comply with governmental, court, and law enforcement requests or requirements relating to your use of the Services or information provided to or gathered by us with respect to such use.