

E-VIVE MOBILE APP TERMS & CONDITIONS, END USER LICENSE AGREEMENT AND PRIVACY POLICY

Effective Date: December 2, 2016

CyMedica Orthopedics, Inc. ("CyMedica" "we" "us" or "our") respects the privacy of users of Our Mobile Medical App ("e-vive™ App" or "App"), and the following Terms and Conditions, End User License Agreement and Privacy Policy (the "Terms") cover your use of this App. Please read these Terms carefully before using the App and services, as these Terms govern your access to and use of the App and related services (the "Services"). As our business grows and we add new functionality to the App, we may revise these Terms periodically. If we do, we will post the changes here. Your continued use of the App after any changes are posted constitutes your acceptance of the new Terms.

PLEASE READ THE TERMS CAREFULLY. BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE APP OR THE SERVICE, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS. IF YOU DO NOT AGREE, YOU MAY NOT USE THE APP OR THE SERVICE.

Section 1. End User License Agreement

1.1 *Third Party EULAs.* Certain aspects of the App and/or the Services are provided by one or more third parties. Such third parties may have their own policies and end user license agreements (collectively, "Third Party Policies and EULAs") that apply to your use of the App and/or the Service. Nothing in this EULA is intended to modify or limit such Third Party Policies and EULAs. This EULA only applies to the App and the Service to the extent actually developed, distributed, licensed and supported by or on behalf of CyMedica.

1.2 *Terms of License.* You acknowledge and agree that, as provided in greater detail in these Terms:

- the App is licensed, not sold to you, and that you may use the Service only as set forth in these Terms;
- your use of the Service may be subject to separate third party terms of service and fees, including without limitation, certain Third Party Policies and EULAs as well as the terms of service and data, SMS, MMS, and other fees of your mobile network operator, which are your sole responsibility;
- you consent to the collection and use of your personally identifiable information and information about your location in accordance with the CyMedica Mobile Medical App Privacy Policy and the privacy policies of third parties included within the Third Party Policies and EULAs;

- the Service is provided “as is” without warranties of any kind and CyMedica’s liability to you is limited;
- disputes arising hereunder will be resolved by binding arbitration, AND BY ACCEPTING THESE TERMS, YOU AND CYMEDICA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury and your claims cannot be brought as a class action. Please review the Arbitration Agreement below for the details regarding your agreement to arbitrate any disputes with CyMedica;
- the App requires access to the following services on your mobile device: UDID, MAC address, or other applicable device identifier, phone state and identity, internet, and SMS/MMS messaging;
- access to certain features of the Service may require access to information about the location of your device, such as GPS coordinates; and
- if you are using the App on an iOS-based device, you agree to and acknowledge the “Notice Regarding Apple,” below.

1.3 *Special Terms Regarding Apple.* If you download software from Apple, Inc.’s App Store, your use of the software must at all times be in accordance with the Usage Rules set forth in the Apple, Inc. App Store Terms of Service, and you acknowledge that this EULA is between you and CyMedica only, not with Apple. Apple is not responsible for the Service and the content thereof. This EULA is not intended to provide for usage rules for software that are less restrictive than the Usage Rules set forth for “Licensed Applications” in, or that otherwise conflict with, the App Store Terms of Service. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Service. In the event of any failure of the Service to conform to any applicable warranty, then you may notify Apple and Apple will refund any applicable purchase price for the App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Service, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be CyMedica’s sole responsibility. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including, but not limited to: (i) product liability claims; (ii) maintenance and support; (iii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iv) claims arising under consumer protection or similar legislation. CyMedica is solely responsible, and Apple is not responsible in any way, for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the App infringe that third party’s intellectual property rights. You agree to comply with any applicable third party terms when using the Service. Apple, and Apple’s subsidiaries, are third party

beneficiaries of this EULA, and upon your acceptance of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary of this EULA. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. Contact information for any questions, complaints or claims with respect to the Service should be directed to CyMedica as provided in [Section 21] below.

Section 2. Additional Terms

2.1 *Privacy Policy.* Please also familiarize yourself with our Privacy Policy, which governs the way we collect, use, disclose and protect information you provide to us by using the App, which can be found in these Terms and by clicking this link:

www.cymedicaortho.com/pdf/CY-0300-001_Mobile_App_Terms_Conditions_Privacy.pdf

2.2 *The e-vive™ System.* CyMedica provides medical devices, including the CyMedica e-vive™ System and accessories (the “e-vive™ System”) that connect with the e-vive™ App. We do not operate, control or supply any information, product, or service that is not clearly identified as supplied by CyMedica, and the use of any products, devices, or services not designated as developed or supplied by CyMedica are not intended to be used, or supported by, this App.

Additional terms and conditions, indications, contraindications, warnings, precautions and accuracy statistics controlling your use of the e-vive™ System are contained in the e-vive™ User Manual (the “User Manual”). Each e-vive™ System contains a paper copy of the User Manual for your reference. You may also access a digital copy of the User Manual by clicking this link: www.cymedicaortho.com/pdf/CY-0090-001_e-vive_IFU.pdf.

Section 3. Your App Account

3.1 *App Account Creation.* In order to use certain features of the App (e.g., to use the Services), you must create a profile within the App (“App Account”). To create an App Account, you must provide an email address, enter your birthdate, and create a Personal Identification Number (“PIN”). Once created, the system will associate your App Account with your e-vive™ System device identification number (“Device ID”). You are responsible for maintaining the confidentiality of your PIN number, and to protect your information, you should only share this PIN number with authorized physicians or care providers. You may delete your App Account at any time, for any reason, by contacting CyMedica directly using the contact information in Section 21 below. CyMedica may suspend or terminate your App Account in accordance with Section 17.

3.2 *Account Responsibilities.* You are responsible for maintaining the confidentiality of your App Account Device ID and PIN, and are fully responsible for all activities that occur on your App. You agree to immediately notify CyMedica of any unauthorized use, or suspected unauthorized use of your App Account or any other breach of security.

CyMedica cannot and will not be liable for any unauthorized use of your App Account or loss or damage arising from your failure to comply with the above requirements.

Section 4. Your Use of the App

The e-vive™ App is an application that is designed to streamline, personalize, and track the usage of the e-vive™ System for optimal results and system improvements. As part of this service, the e-vive™ App asks for information about you, such as identification, contact and health information, including surgery information and personal rehabilitation goals (“User Information”), and may share the information with your approved physicians and providers. In order to access the full functionality of the e-vive™ App, you should provide current and accurate User Information, as it will assist in your discussions with your medical provider. You are responsible for maintaining the accuracy and completeness of your User Information. By agreeing to these Terms, you certify that the information you provide is, to best of your knowledge, true and accurate.

Notwithstanding the above, because CyMedica does not control (i) the User Information you enter into the App, and (ii) environmental, behavioral and other factors impacting performance of the App, you acknowledge and agree that CyMedica is not responsible for any User Information and we make no guarantees regarding the accuracy, currency, suitability, or quality of any data generated by the App. Your use of the App is not intended in any way to be a substitute for an in-person visit with a physician or other qualified health care provider.

Section 5. Age

You must be at least thirteen (13) years of age to use the App. If you are under 13 years of age, you must have parental permission to use the App. By agreeing to these Terms, you represent and warrant to us: (i) that you are at least thirteen (13) years of age, or are a parent/guardian accessing the App on behalf of an individual under 13 years of age; (ii) that you have not previously been suspended or removed from the Service; and (iii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations.

Section 6. We Do Not Provide Medical Advice

The e-vive™ System provides a streamlined control of Neuromuscular Stimulation (NMES) and Transcutaneous Electrical Nerve Stimulation (TENS) products and provides the infrastructure to allow sharing of device and progress information with your physicians or medical care providers. **HOWEVER, CYMEDICA DOES NOT PROVIDE MEDICAL ADVICE. DO NOT USE THE APP FOR EMERGENCY MEDICAL NEEDS. IF YOU THINK YOU ARE HAVING A MEDICAL EMERGENCY, CALL 911 OR EMERGENCY MEDICAL SERVICES.** The information on the App provided by CyMedica does not constitute medical advice of any kind and it is not intended to be, and should not be, used to diagnose or identify treatment for a medical or mental health condition. Nothing on the App should be construed as an attempt to offer or render a medical or mental health opinion or otherwise engage in the practice of medicine by CyMedica. Not all physicians or medical providers who prescribe the e-vive™ System

use the CyMedica web portal to view the progress information generated by the App and your information cannot be accessed by providers unless you share your Device ID and PIN with them. Consult with your providers as desired to determine if they utilize the ability to access this information.

CYMEDICA DOES NOT RECOMMEND, REFER, ENDORSE, VERIFY, EVALUATE OR GUARANTEE ANY ADVICE, INFORMATION, TREATMENT, INSTITUTION, PRODUCT, PHYSICIAN, SURGEON, OPINION OR OTHER INFORMATION OR SERVICES PROVIDED BY ANY PHYSICIAN OR SURGEON USING THE SITE, AND NOTHING SHALL BE CONSIDERED AS A REFERRAL, ENDORSEMENT, RECOMMENDATION OR GUARANTEE OF ANY MEDICAL PROFESSIONAL OR COURSE OF TREATMENT. CYMEDICA DOES NOT WARRANT THE VALIDITY, ACCURACY, COMPLETENESS, SAFETY, LEGALITY, QUALITY, OR APPLICABILITY OF THE CONTENT OR ANYTHING SAID OR WRITTEN BY ANY PHYSICIAN OR ANY ADVICE PROVIDED. CYMEDICA WILL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED DUE TO RELIANCE BY THE USER ON SUCH INFORMATION OR ADVICE PROVIDED BY ANY PHYSICIAN IN CONNECTION WITH THE USE OF THIS APP. YOU AGREE THAT BY USING THIS SERVICE YOU ARE AT LEAST 13 YEARS OF AGE OR ARE A PARENT/GUARDIAN OF AN APP USER UNDER THE AGE OF 13 AND ARE LEGALLY ABLE TO ENTER INTO A BINDING CONTRACT.

Section 7. Parameters of App Features

The e-vive™ App is intended for you to conveniently perform, track, and store your personal electrical stimulation treatments, range of motion assessments, and other rehabilitation information such as rehabilitation goals, pain levels, activity levels and other related information.

The information provided by the App may or may not be used by your physician or medical care providers. The App offers two types of functions – those intended to be accessed by and used by your physician or medical provider in the treatment of pain (Treatment Features), and those that are intended to be used for educational, recreational, and non-medical purposes (Wellness Features). Wellness Features are not intended for the purpose of diagnosis, treatment, or identification of any particular disease, condition or function of the body.

Treatment Features: The e-vive™ System, which is used in conjunction with this App service, are prescription medical devices approved by the FDA in the USA and are intended to be used under the direction of a healthcare provider. Please refer to the User Manual for more information regarding the intended use of e-vive™ System. The electrical stimulation features of the App, which is intended for use as an accessory to the e-vive™ System and other medical devices, is the only feature intended for and approved for medical use.

Wellness Features: The e-vive™ App offers features that allow users and their physicians to set personal goals and track progress in muscle stimulation, range of motion, activity

level, and post-operative pain levels. In addition, the App provides Users with simple tools to organize and track their post-surgical health information, and is intended to help Users store, document, display, show, transfer, or communicate their rehabilitation progress to their health care providers (who must also register to use this service). These features are informational only and are not intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment, or prevention of disease, nor are they intended to affect the structure or any function of the body of man.

The information maintained in your App Account—either in connection with the Treatment features or the Wellness Information Features—may not always be accurate or up-to-date, and should not be relied upon as accurate by you or any health care provider. The accuracy of the data analysis returned to the you is dependent upon the accuracy of the User Information entered by the user and other behavioral and environmental factors, and as such any and all results, reports, data or feedback provided are not guaranteed.

Section 8. Internet Access for Use of the App

The e-vive™ App may utilize your portable device (such as smart phone or tablet) cellular data connection or WiFi connection to access the internet and synchronize your personal identification information and/or usage information in an encrypted, secure manner. However, base level functionality of the system does not require an internet connection. For the App to utilize a cellular data connection on a portable device, you will need a data access plan from your wireless carrier. Alternatively, for the App to utilize a WiFi or Internet connection, you will need to connect to the WiFi network. You may incur charges related to Internet access and data transfer for such uses depending on your plan and connection method. CyMedica may change the requirements for accessing the App from time to time and you are responsible for adhering to the requirements. If you do not agree with the changes, you must stop using the App.

Section 9. Prohibited Uses

You must not use the App to harm others or the App service. For example, you must not use the App to harm, threaten, or harass another person, organization, or CyMedica. You must not: damage, disable, overburden, or impair the App (or any network connected to or delivering the App to you); resell or redistribute the App or any part of it; use any unauthorized means to modify, reroute, or gain access to the App or attempt to carry out these activities; or use any automated process or service (such as a bot, a spider, periodic caching of information stored by CyMedica) to access or use the App.

Section 10. Links to Other Sites

Our service may contain links to third-party web sites or services that are not owned or controlled by CyMedica. CyMedica is not responsible for the contents of any third-party websites or "off-site" Internet information referenced by or linked to third party websites.

Section 11. Ownership of Content

11.1 *User Information.* While we do not claim ownership of the User Information you provide on the App, we do claim ownership of the data content for the sole purpose of providing e-vive performance reports to you and your medical providers. Your User Information remains yours. We also do not control, verify, or endorse the User Information that you provide to the App, such as goals, settings, feedback, etc. However we may use your User Information to calculate medical and research data and in the event we use User Information for internal research & development or business development purposes, we will only use anonymized aggregated information, which means we will not identify you with data collected. By clicking “I Agree” below, you represent and warrant that you have all the rights necessary for you to grant the rights in this section and the use of the content doesn't violate any law. If you share content on the App in a way that infringes others' rights, including privacy rights, you will be deemed in breach of these terms and we may remove your access to the content from the service at any time, or your App Account may be terminated.

11.2 *App Content, Software and Trademarks.* The App may contain content (“App Content”) that is protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by CyMedica, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, reverse engineer, distribute or create derivative works based on the App or the App Content, in whole or in part. If you are eligible to use the App, you are granted a limited license to access and use the App and the App Content and to download or print a copy of the App Content you have provided or to which another user has properly granted you access solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. You are not permitted to use any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the App or the App Content other than as authorized by these Terms is strictly prohibited and will terminate the license granted here. The technology and software underlying the App is the property of CyMedica, our affiliates and our partners (the “Software”). You agree not to reverse engineer, reverse assemble or otherwise attempt to discover any source code version of the Software. We reserve all right, title and interest in and to the Software and App Content, except for the limited rights expressly granted in these Terms.

The CyMedica name and logo are trademarks and service marks of CyMedica (collectively the “CyMedica Trademarks”). Other company, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to CyMedica. You may not use any of CyMedica Trademarks without our prior written permission.

Section 12. Repeat Infringer Policy

In accordance with applicable law, CyMedica has adopted a policy of terminating, in appropriate circumstances and at CyMedica's sole discretion, the App Account access of Users who are deemed to be repeat infringers. CyMedica may also at its sole discretion limit access to the App and/or terminate the App Account of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

Section 13. Release

By using the App, you agree to release, discharge and hold harmless CyMedica from any and all losses, damages, rights, claims, actions of any kind and injury (including death) arising out of or relating to the App, associated hardware or any act or omission by any person, including without limitation, any dispute between you and any other person or regarding any content posted via the App. If you are a California resident, you waive California Civil Code §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.” This release includes, without limitation, any claim resulting from delay and the criminal acts of others.

Section 14. Indemnity

You agree to indemnify and hold CyMedica harmless from any claim or demand, including reasonable attorneys’ fees, made by any third party due to or arising out of or relating to the App, including without limitation, any content posted to or transmitted through the App, or publicly distributed on the web, your use of the App, your connection to the App, your violation of the Terms or Privacy Policy, or your violation of any rights of another.

Section 15. Disclaimer of Warranties

YOUR USE OF THE APP IS AT YOUR SOLE RISK. THE APP IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. CYMEDICA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CYMEDICA MAKES NO WARRANTY THAT (I) THE APP WILL BE EFFECTIVE, WILL FUNCTION WITHOUT DISRUPTIONS, DELAYS OR ERRORS, WILL BE RELIABLE OR ACCURATE, OR WILL MEET YOUR REQUIREMENTS, (II) THE APP WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR ACCESSIBLE AT TIMES OR LOCATIONS OF YOUR CHOOSING, (III) THE RESULTS OR INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE APP WILL BE ACCURATE, RELIABLE TIMELY, OR COMPLETE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, ADVICE, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE APP WILL MEET YOUR EXPECTATIONS, AND (V) ANY ERRORS WILL BE CORRECTED. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CYMEDICA MAKES NO WARRANTIES ABOUT THE SOFTWARE AND FUNCTIONS MADE ACCESSIBLE THROUGH THE APP OR ANY OTHER SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION.

THIRD PARTY PROGRAMS AND DEVICES THAT MAY INCIDENTALLY CONNECT WITH THE E-VIVE™ APP ARE NOT ENDORSED OR WARRANTED BY CYMEDICA. THIS APP DOES NOT PROVIDE MEDICAL OR ANY OTHER HEALTH CARE ADVICE, DIAGNOSIS OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION OR WELLNESS. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF INFORMATION YOU ACCESSED ON OR THROUGH THE APP.

ALWAYS USE CAUTION WHEN GIVING OUT ANY PERSONALLY IDENTIFYING INFORMATION ABOUT YOURSELF OR YOUR CHILDREN.

Section 16. Limitation of Liability

YOU EXPRESSLY UNDERSTAND AND AGREE THAT CYMEDICA WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF CYMEDICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR INABILITY TO USE THE APP; (II) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (III) ANY OTHER MATTER RELATING TO THE APP. IN NO EVENT WILL CYMEDICA'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE APP.

Section 17. Termination

You agree that CyMedica, in its sole discretion, may suspend or terminate your App Account (or any part thereof) or use of the App and remove and discard any content within the App, for any reason. Furthermore, any physician or surgeon may terminate their association with the App or with you at any time and for any reason. If we suspect fraudulent, abusive or illegal activity, we may refer content or App Accounts to law

enforcement authorities. CyMedica will not be liable to you or any third-party for any termination of your access to the App.

Section 18. Dispute Resolution by Binding Arbitration

PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.

Most user concerns can be resolved quickly and to the user's satisfaction by emailing user support. In the unlikely event that our user care team is unable to resolve a complaint you may have (or if CyMedica has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration, mediation, or small claims court instead of in courts of general jurisdiction. Arbitration, which is often cheaper, faster and less formal than a lawsuit in court, uses a neutral arbitrator instead of a judge or jury. Arbitrators can award the same damages and relief that a court can award. If you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of attorneys' fees will be governed by the AAA Rules (as defined below). Any arbitration under these Terms will take place on an individual basis; class arbitrations and class actions are not permitted.

Arbitration Agreement

CyMedica and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior agreements (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of these Terms.

References to "CyMedica", "you", and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or devices under this or prior agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into these Terms, you and CyMedica are each waiving the right to a trial by jury or to participate in a class action. These Terms evidence a transaction in the interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of these Terms.

A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute (“Notice”). The Notice to CyMedica should be addressed to CyMedica Orthopedics, Attn: Legal, 19120 N. Pima Rd, Suite 135, Scottsdale, AZ 85255 (“Arbitration Notice Address”). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). If CyMedica and you do not reach an agreement to resolve the claim within sixty (60) calendar days after the Notice is received, you or CyMedica may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by CyMedica or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or CyMedica is entitled.

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by these Terms, and will be administered by the AAA. The AAA Rules are available online at adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Arbitration Notice Address. The arbitrator is bound by the terms of these Terms. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of the arbitration provision. Unless CyMedica and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. CyMedica will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the AAA Rules. However, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA Rules.

The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees and expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND CYMEDICA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and CyMedica agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class

proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

Notwithstanding any provision in these Terms to the contrary, we agree that if CyMedica makes any future change to this arbitration provision (other than a change to the Arbitration Notice Address) while you are a user of the App, you may reject any such change by sending us written notice within thirty (30) calendar days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

Section 19. Miscellaneous

The Terms constitute the entire agreement between you and CyMedica and govern your use of the App, superseding any prior agreements between you and CyMedica with respect to the App. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content or third-party software. The Terms will be governed by the laws of the State of Arizona without regard to its conflict of law provisions. You and CyMedica agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within Maricopa County, Arizona. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. FURTHER, EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. Any claim or cause of action arising out of or related to use of the App or the Terms or Privacy Policy must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Section 20. Copyright Information

All information in this App is the property of CyMedica. Copyright © 2016, CyMedica Orthopedics, Inc. All rights reserved.

Section 21. Contact Information

Questions or comments regarding these Terms and Conditions should be directed to CyMedica Using the following contact information:

Postal Address:

CyMedica Orthopedics, Inc.
19120 N. Pima Rd., Ste. 135
Scottsdale, AZ 85255

Attention: Customer Service
Email: customerservice@cymedicaortho.com
Telephone: (844)CYM-2014 or (844)296-2014
Fax: (866)296-2772

CYMEDICA MOBILE MEDICAL APP PRIVACY POLICY

Effective Date: December 2, 2016

CyMedica Orthopedica, Inc. ("CyMedica" "we" "us" or "our") respects the privacy of users of our Mobile Medical App ("e-vive™ App" or "App"]), and the following privacy policy (the "Policy") covers your use of this App. CyMedica is not responsible for the contents of any "off-Site" Internet information referenced by or linked to the App. The purpose of this Policy is to inform our users ("you," "your" or "user") about the types of information we gather about you when you download, install and use our App, how we may use that information, with whom it is shared, what choices you have regarding our use of your information, and how you may access some of the information you provide to us.

Section 1. Changes to Policy

Please read this Policy carefully. You can access this Policy at any time by clicking this link: www.cymedicaortho.com/pdf/CY-0300-001_Mobile_App_Terms_Conditions_Privacy.pdf CyMedica respects the privacy of users of this App. We reserve the right to change this Policy at any time by posting a new applicable Policy at this location. Therefore, we encourage you to refer to this Policy on an ongoing basis to ensure that you understand our Policy and are aware of any changes. If you do not agree to the changes, you must cancel your account and stop using the App. If you do not stop using the App, the new terms apply to you and your continued use expresses your agreement.

Section 2. Collection of Personal Information

In order to use the full functionality of the App, we will request certain personally identifiable information (e.g., name, e-mail address, height, weight, gender, birthdate, surgery date, and/or surgery type) (herein referred to "Personal Information"). The Personal Information is important and is requested for the uses described in Section 4 below.

All transmissions of personal identification information by the e-vive™ App are secured and encrypted by SSL protocol, as required by law. You do not need to use all of the features offered in this App. If you do not want CyMedica to use your Personal Information, skip the Profile information entry screens.

Section 3. Your e-vive™ App Device ID, PIN and App Account

Each e-vive device has a unique registration ID number (“Device ID”), which is utilized when pairing with your mobile device via the e-vive™ App. When entering Personal Information into the device, the system will ask you for your email address and Personal Identification Number (“PIN”). It is your responsibility to accurately enter the information and PIN number, and it is your responsibility to provide the correct PIN number to the physician or healthcare provider to whom you wish to provide access to your information, if you choose PIN protection for controller data. You should keep your Device ID number and PIN number confidential beyond those persons that you wish to share the data with. If you wish to grant your physician or healthcare provider(s) access to your e-vive information, you may need to provide them with your Device ID and PIN number. Your physician or healthcare provider(s) will have his or her own account access through a separate service. Do not share your PIN number with unauthorized persons. You must contact Customer Service [customerservice@cymedicaortho.com] right away if you suspect misuse of your Account, unauthorized use or access, or any other security breach in the App.

By creating an Account and using the App, you warrant that you have the right to provide your content and records to the e-vive™ App. You control who may access your content, along with any co-custodians and other invited users.

Section 4. Use of Personal Information You Have Submitted

When you click “I agree” on the e-vive™ App Terms and Conditions, you explicitly agree to this Privacy Policy and consent to the use of the Personal Information you provide via the App. You confirm that you have the legal authority to consent to CyMedica processing all health information you provide, including by obtaining the explicit consent of all other persons whose health data you may provide. That includes storing, using and disclosing the data in accordance with this Policy.

When you do provide us with Personal Information, we may use your Personal Information for five (5) general reasons. First, we may use Personal Information to provide you with the services through the App. Second, we may use your Personal Information to send you information about CyMedica. Third, we may use your information in aggregate form to help us evaluate and modify our App, website, and other related services or related marketing materials. Fourth, we may customize our marketing communications depending on the Personal Information we have about you by sending you information that we believe will be to your benefit. Fifth it will be used to provide technical and sales support.

If you provide an email address, then you may receive announcements or information about CyMedica. You can always choose not to be contacted or to "opt-out" of further contact or solicitations from CyMedica by following the instructions in the email.

Section 5. Collection of Other Information

In order to provide you the service, we will collect certain information about service performance, your devices and your App use. We will automatically upload this information from your device(s) as part of the service. Any individual identification information transmissions will be secured and encrypted using SSL methods and follow all applicable privacy laws to maintain privacy whilst providing the service. Anonymized usage data may be transmitted, which will generally not identify you, and may include information such as the version of the App you have downloaded and installed on your device, IP address, and other information that is not Personal Information.

In order to record and provide feedback from the e-vive device, we may collect certain information transmitted directly by the device.

Section 6. Disclosure of Personal Information

CyMedica takes its responsibility to keep your information private very seriously. We consider your use of the App to be private. However, we may access or disclose information about you or your account under the following limited circumstances:

Operations and Maintenance Contractors: CyMedica may share your Personal Information with third party contractors as is necessary to respond to your requests for products and information, unless you have opted-out of receiving information. Third-party contractors may access your Personal Information to send you this information on behalf of CyMedica. CyMedica also may hire third-party technology providers to host, develop, maintain, or upgrade this App, and to store your Personal Information. When we share your information with third parties working on our behalf, they are required to abide by our Privacy Policy.

Legal Authorities. CyMedica may disclose Personal Information when required by law or legal process; when necessary to protect and defend the rights or property of CyMedica or when necessary to protect the personal safety of CyMedica users and customers.

Aggregate Information. Aggregate information does not contain any Personal Information about our Users. From time to time, CyMedica may share aggregate, non-personal information App usage with third parties, including government agencies, advertisers and our partners.

Section 7. Account Termination

If your App Account is terminated for any reason, either by you or CyMedica, we may permanently delete your data from our servers in accordance with applicable law and regulations. CyMedica is under no obligation to return data to you after the App Account is canceled or the App is uninstalled from your mobile device. If data is stored with an expiration date, we may also delete the data as of that date. Data that is deleted may be irretrievable.

Section 8. Children's Online Privacy

We do not knowingly collect or maintain personal information from children under the age of thirteen (13) or send them requests for Personal Information. If you are under the age of thirteen (13), you should not furnish us with any identifiable information about yourself without a parent's consent. If we learn that personally identifiable information of persons under thirteen (13) years of age has been collected via the App without parental consent, we will take the appropriate steps to delete this information.

Section 9. Communications from CyMedica

We may use the e-mail addresses you provided when you created your App Account to occasionally deliver information relevant to you, benefits, promotions, surveys and notification of other relevant items. If you send us an e-mail with questions or comments, we may use the Personal Information you provide to respond to your questions or comments, and we may save your questions or comments for future reference. However, we will provide you with the option to change your preferences and opt-out of receiving those communications. You may request at any time that we not e-mail you in the future by clicking the "unsubscribe" link which is included at the bottom of any e-mail communication that you receive from us and hitting send, or by contacting us at unsubscribe@cymedicaortho.com. When contacting us by e-mail, please insert "UNSUBSCRIBE" in the subject line and the body of the message. If you unsubscribe, you should assume that your request has been received and is being processed. Please allow ten (10) business days from when the request was received to complete the removal of your e-mail address from our database as some of our promotions may have been in process before submitting such request we will make reasonable efforts to discontinue these e-mail communications as soon as practicable.

Section 10. Security

CyMedica has taken reasonable security measures to protect against the loss, misuse and alteration of information under our control. We safeguard the security of the data you send us with physical, electronic, and other procedures. However, it is not possible to guarantee the security or integrity of information disclosed online. Because no physical or electronic security is impenetrable, by using the App, you agree to assume all risks in connection with the information sent to us or collected by us when using the App.

Section 11. Verification of Information

We use industry standard methods to verify a user's accounting credentials to validate that user's access to our system.

Section 12. Correcting/Updating/Deleting/Deactivating Personal Information

You may review, request corrections, ask that we delete, or refuse further collection or use of the Personal Information CyMedica collects from you. You may do this by contacting CyMedica using the contact information provided at the end of this document.

Section 13. Consent to Receive Notices Via the App

By using the App or submitting Personal Information via the App, you are agreeing that CyMedica may deliver all privacy, terms and conditions, and opt out notices to you in the manners described in this Privacy Policy.

Section 14. Limitation of Liability

YOU UNDERSTAND AND AGREE THAT ANY DISPUTE OVER PRIVACY IS SUBJECT TO THE TERMS AND CONDITIONS OF THE E-VIVE™ APP AND THE E-VIVE™ SYSTEM OF USE (INCLUDING ANY INDEMNIFICATION AND LIMITATIONS ON DAMAGES CONTAINED THEREIN).