



## **Terms of Use Agreement**

### **1. Terms of Use**

These Terms ("Terms") govern your ("User") use of the Vertical Measurement System including the measuring device and the computer application. The computer application is hereafter referred to as the App or the calculator. By accessing and using the Vertical Measurement System the User agrees to be bound by the Terms set out in this legal notice. If the User does not wish to be bound by these Terms, the User may not access, display, use, download, or otherwise copy or distribute Content obtained from the website.

### **2. Updating of these Terms**

Supplier may change, modify, add to or remove from portions or the whole of these Terms. Changes to these Terms will become effective when the changes are posted to the website. Supplier will notify the User of the changes via email or by posting a prominent notice on the website. The User's continued use of this system following the posting of changes or updates will be considered notice of the User's acceptance of these Terms, including any changes or updates.

### **3. Supplier of goods or services details**

In accordance with the disclosure requirements of relevant consumer legislation the supplier of goods or services offered for sale, hire or exchange by way of an electronic transaction, makes the following information available to consumers:

#### **3.1 Supplier is:**

- Peninsula Orthopaedics (Pty) Ltd, trading as Peninsula Orthopaedics (Pty) Ltd( "Supplier"),
- a private limited company by shares duly registered and existing under the laws of South Africa registration number: 2015/358785/07,
- with its physical address at 3rd Floor, Orthopaedic Hospital, Alexander Road, Pinelands, 7405, South Africa,
- Tel +27 21 506 5610,
- Supplier's place of registration is 3rd Floor, Orthopaedic Hospital, Alexander Road, Pinelands, 7405, South Africa.
- Supplier will accept legal service at 3rd Floor, Orthopaedic Hospital, Alexander Road, Pinelands, 7405, South Africa.
- Supplier's directors and office bearers are: Garth Peter Grobler, Brendan John Dower and Marc Boydell Nortje
- The main business of Supplier is to provide measuring jigs and related software.
- Supplier's website is [www.verticalmeasurementsystem.com](http://www.verticalmeasurementsystem.com) and its email address is [brendan@vmssurgical.co.za](mailto:brendan@vmssurgical.co.za)
- Supplier is accredited with the South African Health Products Regulatory Authority (SAHPRA).



#### **4. Goods or Services: Components: Measuring jig and calculator (App)**

- 4.1 The Supplier provides a User with a measuring jig and access to the calculator, which provides information based on the input of the User for use in a hip replacement surgery.
- 4.2 The vertical measurement system acts only as an adjuvant to standard surgical techniques, procedures for leg length correction in hip replacement surgery. The vertical measurement system can only be used to assist in carrying out standard techniques and procedures and does not provide a standalone technique.
- 4.3 It is critical that the surgical technique is understood and meticulously followed.
- 4.4 The App must be used in conjunction with the measurement jig for femoral head measurement of the Supplier. The calculator implements a method of selecting prefabricated components of a hip prosthesis, including a femoral stem, a femoral head and an acetabular cup component for use in hip replacement surgery. The calculator has a data base with data stored thereon as to dimensions of multiple hip prostheses each of which is composed of components selected to co-operate with each other. The database contains appropriate manufacturer's data and empirically determined data as to the dimensions of the hip prostheses. The User inputs into the App a planned leg length correction that is a result of the User's pre-operative determination using clinical and radiological techniques to obtain a calculated leg length correction. The User inputs into the calculator data as to the size of the acetabulum in that patient. The User inputs into the calculator data as to a measured vertical height of a resected femoral head with the resected femoral head oriented in its normal anatomical position obtained by measurement thereof with the measurement jig. The calculator compares the measured vertical height from the recorded height of a selected prosthetic femoral implant assembly to provide a projected height difference and therefore a calculated leg length correction. The calculator compares the planned leg length correction to the calculated leg length correction with the prosthetic femoral implant assembly. If the difference exceeds a predetermined maximum, the calculated leg length correction is recalculated using one or more alternative components of the hip prosthesis until the difference between the planned leg length correction and the calculated leg length correction is less than the predetermined maximum. The calculator thereby identifies a femoral implant assembly to obtain a planned leg length correction or a correction that is close to the planned leg length correction.
- 4.5 The detailed surgical technique is available at the website: [www.verticalmeasurementsystem.com](http://www.verticalmeasurementsystem.com)

#### **5. Terms of download**

- 5.1 The calculator can be accessed through the website: [www.verticalmeasurementsystem.com](http://www.verticalmeasurementsystem.com)
- 5.2 User must notify Supplier within 24 hours of becoming aware of defect by email to the following address: [brendan@vmssurgical.co.za](mailto:brendan@vmssurgical.co.za)
- 5.3 User's cooling-off rights under section 44 of ECTA do not apply in terms of section 42 of ECTA, due to downloads being audio, or video recordings, or software or newspapers, periodicals, magazines or books.

#### **6. Complaints and disputes**

Users can file complaints via the "Contact us" service of the website [www.verticalmeasurementsystem.com](http://www.verticalmeasurementsystem.com). Currently Supplier does not subscribe to any alternative dispute resolution code or mechanism.

#### **7. Intellectual Property Rights and Copyright**

- 7.1 The App is protected by pending patent rights (PCT patent application number PCT/IB2017/057164 with publication number WO 2018/092054). The User acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the App. This



Agreement does not grant the User any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other intellectual property rights, or licences in respect of the App.

- 7.2 Supplier provides certain information on the App. Content displayed on the App is provided by Supplier, its affiliates or subsidiary, or any other third party owners of the content ("Content"). All the proprietary works, and the compilation of the proprietary works, belong to the Supplier, its affiliates or subsidiary, or any third party owners of the rights ("Owners"), and the Content is protected by South African and international copyright laws.
- 7.3 Supplier may make any changes to the App, the Content, or to products or services offered through the App at any times and without notice to the User. All rights in and to the Content is reserved and retained by the Owners. Except as specified in these Terms, the User is not granted a license or any other right including under Copyright, Trademark, Patent or other Intellectual Property Rights in or to the Content.

## **8. Limited License to Users**

- 8.1 Users must be surgeons suitably qualified to perform hip replacement surgeries, or a person under the direct supervision and control of such suitably qualified surgeon.
- 8.2 Supplier grants the User, a non-exclusive, non-transferable, limited and revocable right to access, display and use the current and future Content for the purpose of identifying a femoral implant assembly to obtain a planned leg length correction or a correction that is close to the planned leg length correction during hip replacement surgery.
- 8.3 The App and the Content may not be reproduced or otherwise exploited for any commercial purpose, other than for a surgery performed on a patient, without the express prior written consent of Supplier.
- 8.4 The license does not allow the User to collect product or service listings, descriptions or other information displayed by the App, and does not allow any derivative (copied or derived) use of this App or the Content for the benefit of the User or a third party. The User may not frame the App or the Content without the express written consent of Supplier.
- 8.5 Supplier and the Owners, their affiliates or subsidiary reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.
- 8.6 Any unauthorised use terminates this license.
- 8.7 The measurement jig used with the App is for single use only and must be properly disposed of after its first use. **STERILISATION OF THE MEASUREMENT JIG CAN RESULT IN MATERIAL DEFORMATION AND INCORRECT MEASUREMENTS.** Re-using a measurement jig is unauthorized, incurs liability on the part of the User towards the patient for making incorrect measurements and terminates this licence.

## **9. Limitation of liability:**

- 9.1 Subject to sections 43(5) and 43(6) of ECTA, and to the extent permitted by law, the App and all Content on the App, are provided on an "as is" basis, and may include inaccuracies or typographical errors and Supplier, Owners, suppliers, employees, directors partners, affiliates and agents will not be liable for any damage, or loss or liability of any nature incurred by whoever as a result of any action or omission. The Owners make no warranty or representation as to the availability, accuracy or completeness of the Content, or any third-party content accessible via an Internet link.
- 9.2 Neither Supplier nor any holding company, affiliate or subsidiary of Supplier or Owners, will be held responsible for any damage of any kind, including the injury, disfigurement, illness or death



of any person, related to the use of, or the inability to access or use the Content or the App or any functionality, or of any linked website to the extent permissible by law.

- 9.3 The output of information or Content to a User for use in a hip replacement surgery by the App is dictated by the input of data and measurements by the User as set out in more detail under the heading "4. Goods or Services". Neither Supplier nor any holding company, affiliate or subsidiary of Supplier or Owners, will be held responsible for any damage of any kind, including the injury, disfigurement, illness or death of any person, related to the User input being incorrect or misguided.
- 9.4 The App allows Users to log procedures carried out on patients to keep a record of patient-specific information, information about the procedure(s) carried out on a patient, the User input to the App, the output of information or Content to a User by the App, and the outcome of the procedure(s). Users must log procedures carried out on patients in sufficient detail. In the event that a procedure has not been logged the Supplier will not be able to later verify or confirm the output of information by the App.

## **10. Privacy, access to and use of information**

- 10.1. Supplier receives various types of information ("Information") from Users who access the App, including data such as patient-specific measurements and other patient data that the User inputs into the App when using the App. The **User warrants that he/she has permission from the patient to enter, log and record personal or other patient-specific information in the App.** Supplier may collect and store this data and process it for any lawful purpose, including the purpose of improving the App and the services and goods associated therewith.
- 10.2. Supplier also receives personal information as detailed in the Promotion of Access to Information Act ("PAIA"), Act 2 of 2000, and as detailed in section 1 of ECTA ("Personal Information").
- 10.3. Supplier may electronically collect, store and use Personal Information, including names, identifiers, contact details, surfing patterns, emails and IP addresses. Supplier voluntarily subscribes to section 51 of ECTA and endeavours to treat Personal Information it receives accordingly.
- 10.4. Whenever the User is of the opinion that Supplier fails to comply with section 51 of ECTA, the User will contact the Supplier by sending an email to [brendan@vmssurgical.co.za](mailto:brendan@vmssurgical.co.za). The Supplier will review the User's representations made by email and, if within the Supplier's sole and absolute discretion advisable, take corrective action and in any event within 10 days respond to User informing about corrective actions taken, if any.
- 10.5. It is possible for Internet-based communications to be intercepted.
  - Without the use of encryption, the Internet is not a secure medium and privacy cannot be ensured. Internet e-mail is vulnerable to interception and forging.
  - The Owners will not be responsible for any damages you or any third party may suffer as a result of the transmission of confidential or disclosed information that you make to the Owners or Supplier through the Internet, or that you expressly or implicitly authorise the Owners to make, or for any errors or any changes made to any transmitted information.
  - To ensure acquaintance with and awareness of the privacy measures and policies of the Supplier, the User is urged to take care to read and understand the underlying privacy clauses incorporated in these Terms.

## **11. Privacy - casual surfing**

- 11.1 The User may visit the App without providing any personal information.



- 11.2 The User accordingly grants express written permission for the App servers in such instances collecting the IP address of the User computer, but not the email address or any other distinguishing information.
- 11.3 This information is aggregated (added up) to measure the number of visits, average time spent on the App, pages viewed, etc.
- 11.4 Supplier uses this information to determine use of the App, and to improve Content.
- 11.5 Supplier assumes no obligation to protect this information, and may copy, distribute or otherwise use the information.

## **12. Privacy - unsolicited information**

- 12.1 If the User posts unsolicited content or other information ("Information") to the App and does not indicate otherwise the User grants to the Owners a:

- non-exclusive;
- royalty-free;
- perpetual (everlasting);
- irrevocable (irreversible); and
- fully sub-licensable,

right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such Information throughout the world in any media.

- 12.2 The User grants to the Owners the right to use the name that the User submits in connection with such Information, if they choose. The User warrants:

- that the User owns or otherwise controls all of the rights to the Information that the User posts;
- that the Information is accurate;
- that by the supply of the Information to Supplier the User does not violate this Policy and does not infringe the rights of any person or entity; and
- that the User indemnifies the Owners for all claims resulting from the receipt by the Supplier of the Information the User supplies to it.

Supplier may monitor and edit or remove any Information, where posted to public pages. The Supplier takes no responsibility, and assumes no liability for any Information posted by the User or any third party.

## **13. Privacy-solicited information the User gives to Supplier**

- 13.1 Supplier receives and stores all Information, including Personal Information which the User enters on the App or gives to Supplier, in any other way. The User may choose not to provide certain Information, but that may limit the services or products that the User may wish to obtain from this Supplier.

- 13.2 Supplier provides its products and services in conjunction with its affiliates and subsidiaries. In this regard and unless specifically restricted by the User from the license below, the User and when entering into the specific transactions in question expressly grants in writing to the Owners and the Supplier a:

- non-exclusive;



- royalty-free;
- perpetual;
- irrevocable; and
- fully sub-licensable,

right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such Information throughout the world in any media.

#### **14. Privacy - promotional information**

Supplier aspires to provide first-class service to its customers, which requires Supplier providing information to the User about new services or special offers. In each instance, the User is provided an opportunity to opt-out of such information circulars. For more information, please call the Supplier Help Desk, or send an email to [brendan@vmssurgical.co.za](mailto:brendan@vmssurgical.co.za).

#### **15. Privacy- business transfers**

Supplier may enter into business arrangements and its customer base is one of the more valued assets. In such an event, customer Information will be one of the transferable assets.

#### **16. Privacy- lawful purposes**

When the Supplier is served with due legal process requiring the delivery of Personal Information, it has the legal duty to abide by that demand, and will do so. Supplier may also impart Personal Information if permitted or required to do so by law.

#### **17. Privacy-surveys and statistical profiles**

- 17.1 Supplier understands that efficiency and customer care translates to good service. Supplier may periodically conduct online customer care surveys to enable the updating of service standards.
- 17.2 When it conducts a survey, Supplier must inform the User how the information gathered will be used, and provide the User with the opportunity to opt-out from such surveys.
- 17.3 Despite terms to the contrary, Supplier may choose to use Personal Information to compile profiles for statistical purposes and may choose to trade with such profiles and statistical data, as long as the profiles or statistical data cannot be linked to any specific data subject, including the User, by a third party.

#### **18. Privacy- storage**

Personal Information will be stored for as long as it is used and for a period of at least one year, together with a record of the Personal Information and the specific purposes it was collected for. Personal Information will be destroyed once it has become obsolete (out of date or unusable).

#### **19. Privacy- interception**

Subject to the Regulation of Interception of Communications Act ("RIC"), Act 70 of 2002, the User agrees that the Supplier may intercept, block, read, delete, disclose and use all communications sent or otherwise communicated to the Supplier, its employees, directors and agents. User agrees that his or her consent satisfies the requirements of ECTA and RIC for consent in "writing" as defined.

#### **20. Access to Information Manual**

This Manual can be obtained at: [www.supplier.co.za/access2information/manual.htm7](http://www.supplier.co.za/access2information/manual.htm7).



## **21. Choice of Law**

- 21.1 This App is controlled, operated and administered by Supplier from its offices as set out below within the Republic of South Africa.
- 21.2 These Terms will be governed by the laws of the Republic of South Africa, excluding its conflict of law provisions and without regard to conflict of law principles, and the User consents to the jurisdiction of the Western Cape High Court in the event of any dispute.
- 21.3 If any of the provisions of these Terms are found by a court of competent jurisdiction to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to give effect to the intent of these Terms, and the remainder of these Terms will continue in full force.
- 21.4 These Terms constitutes the entire agreement between the Supplier and the User with regard to the use of the Content and this App.

## **22. Contact Details**

- 22.1 In the event that you need to contact the Supplier for purposes related to these Terms and Conditions, please use the following:
- Telephone: 0215065610
  - Fax: 0215065619
  - Email: [brendam@vmssurgical.co.za](mailto:brendam@vmssurgical.co.za)

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This App was most recently updated on the **16th of August 2019**