

SOFTWARE LICENSE AND SERVICES AGREEMENT
("Agreement")

TERMS AND CONDITIONS

BY SUBMITTING A PURCHASE ORDER TO ORTHOCRAT IN ACCORDANCE WITH THESE TERMS AND CONDITIONS, CUSTOMER IS LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL BE EFFECTIVE ON THE DATE CUSTOMER SUBMITS THE PURCHASE ORDER TO ORTHOCRAT ("EFFECTIVE DATE"). IF CUSTOMER DOES NOT SUBMIT A PURCHASE ORDER TO ORTHOCRAT, CUSTOMER SHALL NOT USE THE SOFTWARE AND ORTHOCRAT WILL HAVE NO FURTHER OBLIGATIONS TO CUSTOMER. IF AN INDIVIDUAL IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT HE/SHE HAS THE LEGAL AUTHORITY TO BIND THE LEGAL ENTITY TO THIS AGREEMENT, IN WHICH CASE "CUSTOMER" SHALL MEAN SUCH ENTITY. THIS AGREEMENT INCORPORATES BY REFERENCE (I) THE HIPAA [BUSINESS ASSOCIATE AGREEMENT POSTED ON ORTHOCRAT'S WEBSITE AT https://www.orthoweb.com/OrthoWebHome/LicenseAgreement.aspx](https://www.orthoweb.com/OrthoWebHome/LicenseAgreement.aspx) AND (II) THE QUOTATION.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS.

1.1 "Customer" means the individual or legal entity, as the case may be, permitted to use the Software pursuant to the terms and conditions of this Agreement.

1.2 "Orthocrat" means Orthocrat Ltd., an Israeli company with its principle place of business at 35 Efal Street, Petach- Tikva 49511, Israel.

1.3 "Software" means Orthocrat's proprietary software products received by the Customer, in object code form, including User Documentation, including any Corrections and Updates (as such terms are defined below) thereto provided by Orthocrat to Customer under this Agreement.

1.4 "Software Keys" means the code used to activate the Software.

1.5 "Purchase Order" means the purchase order for the Software, Subscription and Support Services, and related services stated in the Quotation that is submitted by Customer to Orthocrat and accepted by Orthocrat.

1.6 "Quotation" means the quotation containing fees, payment terms, product and services descriptions, and related terms specific to Customer that is submitted by Orthocrat to the Customer and accepted by Customer in writing.

1.7 "User Documentation" means Orthocrat user manual(s) and other written or on-line materials on the proper installation and use of the Software, as made available by Orthocrat from time to time.

2. GRANT OF RIGHTS.

2.1 Grant of License. Subject to the terms and conditions of this Agreement and its attachments and schedules thereto, Orthocrat agrees to grant to Customer and Customer hereby agrees to accept from Orthocrat a world-wide, non-exclusive, non-assignable, non-transferable license to use the Software in accordance with the terms and conditions of this Agreement, the User Documentation, and subject to the following: (i) use of the Software by Customer shall be limited to use by physicians, orthopedic technicians, or other medical personnel under a physician's supervision acting on Customer's behalf (the "Authorized Users"), on a single DICOM-compliant computer or server solely for internal purposes for medical visualization and presentation purposes in connection with Customer's ordinary and customary patient diagnosis and treatment operations, and all in accordance with the terms herein. Customer shall obtain the agreement of the Authorized Users to the terms and conditions of the license granted herein and shall not permit persons other than the Authorized Users to use the Software; (ii) Customer agrees to use all security measures provided in the Software

and take all other reasonable measures to prevent unauthorized use; and (iii) Customer may make one (1) copy of the Software for archival or disaster recovery purposes and to enable Customer technicians to perform installation and support.

2.2 License Restrictions. Except as expressly and unambiguously authorized under the terms of this Agreement, the licenses granted herein do not permit Customer to: (a) sell the Software to any third party, directly or indirectly; (b) copy, distribute, reproduce, use or allow third party access to the Software other than Authorized Users; (c) except as required by local law, decompile, disassemble, reverse engineer, convert or apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any trade secret information or process contained in the Software; or (d) modify or create a derivative work of any part of the Software. Subject to Section 5.2 below, Customer may not install, use or access any Software at or from any location other than on the designated computer or server at the Customer's designated site specified in the Quotation ("Designated Site"). If the Software is being licensed on a "floating" basis, the use of the Software at anyone time at any one location shall be limited to the number of licenses that the Customer has licensed for that location as set forth in the Quotation. Orthocrat reserves the right to monitor the Licenses used at any one time; in the event Orthocrat discovers that Customer uses excess Licenses than actually licensed, then Orthocrat will notify the Customer of such excess use and Customer will either pay for the additional Licenses or immediately cease to use the excess licenses. Customer represents and warrants that it will permit only those Authorized Users that have been properly trained on the Software to use the Software and that such use shall be in accordance with the terms of this Agreement.

2.3 Ownership. The Software provided by Orthocrat are licensed to the Customer, and not sold. Orthocrat presently owns and will continue to own all right, title, and interest in and to the User Documentation, the Software and its source code, and any and all copyrights, trademarks, trade names, logos and other proprietary rights in and to the User Documentation, the Software and any other materials provided to or otherwise made available to Customer hereunder, and all worldwide intellectual property rights embodied in any of the foregoing. Orthocrat represents that Orthocrat has the right to license the Software under this Agreement to Customer.

2.4 No Other Rights. Customer's rights with respect to the Software are limited to those expressly granted in this Agreement. Orthocrat reserves all rights and licenses in and to the Software not expressly

granted to Customer under this Agreement. There are no implied licenses or other rights granted to the Customer by this Agreement.

3. PRICE AND PAYMENT TERMS.

3.1 Fees and Payment Terms. In consideration for the rights granted hereunder, Customer will pay Orthocrat such fees as stated in the Quotation (the "License Fees"). Orthocrat shall have the right, in its sole discretion, from time to time or at any time, to amend such License Fees with thirty (30) days' prior written notice.

3.2 Late Payments. A late payment charge of one percent (1%) per month shall be charged upon all unpaid amounts due hereunder as of thirty (30) days after the applicable due date and Customer will reimburse Orthocrat for any costs it incurs, including reasonable attorneys fees, to collect past due amounts.

3.3 Consumer Price Index (CPI). Prices as stated in the Quotation are subject to the U.S. CPI increase. Prices shall be reviewed by Orthocrat and shall be adjusted according to the CPI. In the event of an adjustment, Orthocrat shall apply the adjusted price to the next billing invoice to be issued to Customer.

3.4 Taxes. Customer shall pay all duties, assessments, excise taxes, and the like, now or hereafter applied on the sale, transportation, import, export, licensing or use of the Software including sales tax, value added tax or similar tax. All payments by Customer shall be made free and clear of, and without reduction for, any withholding taxes or banking charges.

4. **DELIVERY.** Actual delivery date shall be mutually agreed upon between the parties. All deliveries shall be Ex Works (Intercoms 2000) the warehouse or other facility of Orthocrat. Title and risk of loss to the Software shall pass to Customer upon delivery to the Customer. The Software and User Documentation shall be delivered, as Orthocrat elects (i) to a common carrier; (ii) Customer's agent or any other person Customer specify; or (iii) via download of the Software over the internet. For the avoidance of doubt, the Software shall be deemed delivered and accepted by Customer on the date Orthocrat provides Customer with Software Key(s) via email.

5. INSTALLATION; SUPPORT AND TRAINING.

5.1 Installation. Installation of the Software consists of loading each unit of the Software on one computer or server at the Customers Designated Site and activating the license for such Software with the Software Key. The Software may be installed, or Customer can arrange for Orthocrat to do so, by remote access. If Customer requires that Orthocrat install the Software by remote access, Customer shall provide Orthocrat with all relevant information about the environment in which the Software is to be installed, including information about the network and configuration which is planned for the Software, including, but not limited to the PAC Specifications, as well as names and contact information for orthopediclogy personnel responsible for the installation. Installation services to be provided and fees for installation services shall be as set forth in the Quotation. Orthocrat may charge additional time and expenses if the time it incurs to perform the installation is extended if it receives incorrect or incomplete information from Customer, or if installation is delayed because of the unavailability of the required environment, details or responsible parties. Installation of the Software must be scheduled by the Customer within six (6) months of delivery.

5.2 Remote Access. The Software furnished under this Agreement may allow Customer to use the Software and/or view data over the internet or in other remote manners. Customer must ensure that any remote access to and remote use of the Software is only by Authorized Users and is in accordance with the terms and conditions of this Agreement. Additionally, Customer is responsible for maintaining appropriate security to detect and/or prevent (i) access by unauthorized users, (ii) unauthorized use of any Software, and (iii) wrongful use of or access to protected health information and operational data, and

Customer shall indemnify and hold Orthocrat, its affiliates, officers and employees harmless from any losses, judgments, damages or expenses (including attorneys fees) arising out of or resulting from remote access use of the Software.

5.3 Instruction Manuals and Documentation. Orthocrat shall furnish to Customer, at the time of delivery of the Software pursuant to Section 4 above, the User Documentation.

5.4 Training. At the prior written request of the Customer, and in addition to the License Fee, Orthocrat shall provide the Customer with on-site training and assistance in respect to the Software and/or any Corrections or Updates (as defined below) pursuant to the terms and conditions as shall be agreed upon in writing by the parties from time to time and at the additional daily fee as set forth in the Quotation, provided that such requested training shall be for a minimum of three (3) consecutive days. Any such training session shall occur during normal business hours (9:00am -5:00pm), excluding weekends and holidays. The right to receive such foregoing training expires twelve (12) months from the Effective Date.

5.5 Customer shall keep Orthocrat informed as to any problems encountered with the Software as delivered by Orthocrat to Customer, and any misuse or suspected misuse of the Software. Furthermore Customer shall communicate promptly to Orthocrat any suggested modifications or improvements to the Software. Customer agrees that Orthocrat shall have any and all right, title and interest in and to any modifications or improvements of the Software, whether suggested by Customer or not, without the payment of any additional consideration hereunder to Customer or any such party, and that Customer hereby assigns to Orthocrat all worldwide, right, title, and interest in the same and will reasonably cooperate with Orthocrat in effecting such ownership rights, if applicable.

5.6 Orthocrat Subscription and Support. During the Term of this Agreement and provided that Customer is current in payment of the annual service fees as set forth in the Quotation ("Service Fees"), Orthocrat shall provide the Customer technical support services as set forth in Schedule A ("Subscription and Support Services"). Notwithstanding the foregoing, Orthocrat is not obligated to provide the foregoing internet support if the Customer fails to maintain uninterrupted internet access.

5.7 Following the Warranty Period, as defined herein in Section 8.1, Customer can terminate the Subscription and Support Services set for in Section 5.6 upon 60 (Sixty) days prior to annual renewal with a written notice. Such termination shall not affect the other rights and obligations set forth herein. The foregoing does not derogate from Orthocrat's right to terminate the Subscription and Support Services for a delay in payment by the Customer of any due and payable Service Fees.

5.8 Additional Services. Any services not set forth herein, including but not limited to additional installation, training, or any other services, will be set forth in a separate written agreement between the parties.

6. **UPDATES.** Provided Customer has not terminated Subscription and Support Services and has paid the applicable Service Fees, Orthocrat shall make available, at its sole discretion, in the form of executable code, or revisions to the User Documentation, as the case may be: (i) corrections or fixes to errors in the Software (a "Correction"); and (ii) enhancements, and updates to the Software which add or improve functionality or performance of the Software but which do not solely correct or fix an error in the Software and which do not require an additional software license fee (an "Update"), together with associated documentation. Orthocrat shall provide the Customer with 6 months prior notification, if at any time during the Term of this Agreement Orthocrat announces the end of life of the Software. In addition, upon thirty (30) days prior written notice to Customer, Orthocrat is entitled to add or delete Software to and from the listed Software. Orthocrat shall

have no obligation to provide Subscription and Support Services for a version of the Software for more than twelve (12) months after it has been discontinued or updated by a Correction or Update. Customer understands and acknowledges that Updates and Corrections are performed remotely by Orthocrat and Orthocrat does not undertake to personally attend the Customer's facility for installation purposes, unless agreed upon by the parties hereto.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Each party represents and warrants to the other as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has the requisite power and authority to enter into and perform its obligations under this Agreement in accordance with its terms without the consent of any other person.

(b) The execution, delivery and performance of this Agreement by it have been duly and effectively authorized by all necessary corporate action. This Agreement upon execution shall constitute its legal, valid and binding obligation, enforceable against it, subject to applicable laws and regulations.

(c) The execution, delivery and performance of this Agreement by it, does not conflict with any provision of law applicable to it or result in any breach of its organizational documents, any agreement with any entity or any order, judgment or other restriction which it may be bound.

(d) It shall perform its obligations pursuant to this Agreement in a manner that complies with all applicable laws and regulations.

7.2 Additional Undertakings of Customer. During the Term of this Agreement and for a period of twelve (12) months thereafter, Customer shall refrain from developing, servicing or consulting with regard to software which is substantially competitive with the Software, without the prior consent of Orthocrat.

8. WARRANTY AND DISCLAIMER.

8.1 Limited Warranty. Orthocrat warrants that the Software provided to Customer shall operate in material conformance with its applicable written specifications, for a period of 12 (twelve) months after delivery of Software to Customer pursuant to Section 4 above (the "Warranty Period"). Orthocrat shall have no obligation with respect to Software, if its failure to meet this warranty results from its (a) not being properly installed, used or maintained; (b) modification by the Customer; (c) use or combination with products not validated in writing by Orthocrat; or (d) use other than as a measurement tool for Orthopedic pre-operative planning. Except as otherwise set forth in this Agreement, the Customer is being provided the Software "as is" and Orthocrat does not warrant (i) that the operation of the Software will be uninterrupted or error-free; (ii) that any errors in any Software will be corrected; (iii) that the Software will satisfy Customer's requirements; or (iv) that the Software will operate in the combinations that Customer may select for use. 8.2 As Customer's sole and exclusive remedy and Orthocrat's entire liability for any breach of the foregoing warranty, Orthocrat will, at its sole option and expense, upon written notice from the Customer, promptly repair or replace any Software which fails to meet this limited warranty or, if Orthocrat is unable to repair or replace the Software, terminate this Agreement and, upon Customer's deletion of all copies of the Software and return of all Orthocrat materials to Orthocrat, refund to Customer a portion of the applicable paid License Fees, pro rata, based upon a thirty six (36) month use period. Following the expiration of the Warranty Period, Customer understands and acknowledges that the cost of replacement or repair of the Software will be at the market rate and labor will be billable by Orthocrat at its then prevailing hourly rate. Repair or replacement of the Software does not extend the Warranty Period. Without derogating from the foregoing, Customer can purchase an extended warranty from Orthocrat.

8.2 Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8.1 (AS MODIFIED BY THIS SECTION), ORTHOCRAT MAKES NO WARRANTIES TO ANY PERSON WITH RESPECT TO THE SOFTWARE OR ANY SERVICES OR LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ORTHOCRAT ALSO MAKES NO WARRANTY REGARDING NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS.

9. LIMITATION OF LIABILITY.

9.1 Liability Limitation. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, ORTHOCRAT SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY USE OF THE SOFTWARE AND CUSTOMER SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED THROUGH THE SOFTWARE OR ALLOW IT TO REPLACE PROFESSIONAL MEDICAL JUDGMENT OR THE DUTY TO ADHERE TO THE REQUIRED STANDARD OF CARE USED IN THE MEDICAL COMMUNITY. CUSTOMER AGREES THAT ITS USE OF THE SOFTWARE SHALL NOT DIMINISH ITS RESPONSIBILITY FOR PATIENT CARE. ORTHOCRAT WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE LICENSE FEES PAID TO ORTHOCRAT HEREUNDER DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE OR (II) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST DATA OR (III) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES OR (IV) FOR LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE.

10. INDEMNIFICATION.

10.1 Infringement Indemnity. Subject to Section 10.3 below, Orthocrat will defend any action brought against Customer to the extent that it is based upon a claim that the Software, as provided by Orthocrat to Customer under this Agreement and used within the scope of this Agreement, infringes any copyright, patent, trademark or misappropriates any trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer or agreed upon by Orthocrat in settlement. If Customer's use of any of the Software hereunder is, or in Orthocrat's opinion is likely to be, enjoined due to the type of infringement specified in this Section 10.1, Orthocrat may, at its sole option and expense: (a) procure for Customer the right to continue using such Software under the terms of this Agreement; (b) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the enjoined Software; or (c) if options (a) and (b) above cannot be accomplished despite Orthocrat's reasonable efforts, then Orthocrat may terminate Customer's rights and Orthocrat's obligations hereunder with respect to such Software and refund to Customer the license fees paid by Customer to Orthocrat for the infringing Software for which Customer is obligated to refund, such refund to be pro rata based upon a thirty six (36) month use period.

10.2 Exceptions. Notwithstanding the terms of this Section 10, Orthocrat will have no liability for any claim of any kind to the extent it results from: (a) modification of the Software made other than by Orthocrat; (b) the combination, operation or use of any Software supplied hereunder with equipment, devices or software not supplied by Orthocrat to the extent such a claim would have been avoided if the

Software were not used in such combination; (c) failure of Customer to use updated or modified Software provided by Orthocrat to avoid infringement; (d) use of the Software in a manner not authorized by Orthocrat except as set forth in its published specifications or manuals or specifically agreed to in writing; or (e) a claim giving rise to Customer's indemnity obligations under Section 10.4 below.

10.3 Customer Indemnity. Without derogating from Section 5.2 above, Customer shall indemnify, defend and hold Orthocrat and its affiliates, officers, employees and agents harmless from any claims, demands, liabilities or expenses, including reasonable attorneys' fees, incurred by Orthocrat as a result of any claim or proceeding against Orthocrat arising out of or based upon (i) the combination, operation or use of the Software with any hardware, product, programs or data not supplied or approved in writing by Orthocrat, if such infringement would have been avoided but for such combination, operation or use or (ii) the modification of the Software by Customer, (iii) the negligence or willful misconduct of Customer, its officers, employees and agents; or (iv) Customer or its officers, employees or agents, breaching any term, representation or warranty of this Agreement.

10.4 In case of an action brought by a third party against either Customer or Orthocrat (the "Indemnified Party"), in respect of which indemnification may be sought from the other party (the "Indemnifying Party") under this Section 10, the Indemnified Party shall immediately notify the Indemnifying Party of such action and allow the Indemnifying Party to engage in the defense of such action, provided that a condition to any settlement of such action by the Indemnifying Party shall be the full and final release of the Indemnified Party from any and all liabilities to the plaintiff. The Indemnifying Party shall not settle such action nor admit any facts in connection therewith without prior written consent of the Indemnified Party.

10.5 Sole Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 10 SET FORTH ORTHOCRAT'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

11. CONFIDENTIALITY.

11.1 Definition. "Confidential Information" means the terms and conditions of this Agreement; and Orthocrat's, and/or Customer's business or technical information, including but not limited to any information relating to product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is marked or otherwise identified as confidential or proprietary, or that the receiving party knows or should know is confidential or proprietary.

11.2 Exclusions. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is properly known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by employees or consultants of the receiving party who did not have access to the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

11.3 Use and Disclosure Restrictions. During the term of this Agreement, and for a period of five (3) years after any termination of this Agreement, each party will not use the other party's Confidential Information except as permitted herein, and will not disclose such Confidential Information to any third party except to employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants).

However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement; (b) on a confidential basis to legal or financial advisors; or (c) pursuant to a registration report or exhibits thereto filed or to be filed with the Securities and Exchange Commission, listing agency or any state securities commission, or any other associated filings of any country. Either party may provide a copy of this Agreement or disclose its details in connection with any financing transaction or due diligence inquiry, but only if the recipient agrees to keep this Agreement confidential.

11.4 Protected Health Information. Notwithstanding the foregoing, any of Customer's Protected Health Information, as such term is defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, only shall be used or disclosed as set forth in the Business Associate Agreement entered into by and between Orthocrat and Customer.

12. TERM AND TERMINATION.

12.1 Term. This Agreement shall come into full force and effect on the Effective Date and shall continue in full force and effect for an initial term of one (1) year from the Effective Date (the "Initial Term"), and shall thereafter automatically renew for successive two (2) year periods (each a "Renewal Term"); and, together with the Initial Term, the "Term"), unless earlier terminated in accordance with the terms of this Agreement. Either party may terminate this Agreement effective on the last day of the Initial Term, or any Renewal Term, by serving written notice of such termination on the other party at least ninety (90) days prior to the end of the Initial Term or Renewal Term, as the case may be. Customer understands that after the date specified above, it shall have no right whatsoever to continue as a licensee regardless of any documented continuation of the relationship with Orthocrat and that it will be entitled to no compensation in connection with such termination.

12.2 Termination for Cause. This Agreement may be terminated by a party for cause immediately upon the occurrence of any of the following events:

- (a) If the other party ceases to do business, or otherwise terminates its business operations without a successor; or
- (b) If the other party materially breaches any material provision of this Agreement and fails to cure such breach within 30 days (10 days in the case of a failure to pay and immediately in the case of a breach of the confidentiality provisions of Section 11) of written notice describing the breach; or
- (c) If the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within sixty (60) days).

12.3 Effect of Termination. Upon termination or expiration of the Agreement, (i) all of Customer's rights and licenses granted hereunder shall immediately cease and terminate; (ii) Customer shall pay Orthocrat all amounts accrued and/or due and outstanding as of the date of termination or expiration and remit such payment within thirty (30) days of the termination date; and (iii) Customer will immediately return to Orthocrat all Orthocrat Confidential Information, catalogues and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof). Each party understands that the rights of termination hereunder are absolute. Neither party shall incur any liability or compensation obligation whatsoever for any damage (including, without limitation, damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party that complies with

the terms of the Agreement whether or not such party is aware of any such damage, loss or expenses. Sections 2.3, 7, 8, 9, 10, 11, 12.3, and 15.3 shall survive termination or expiration of this Agreement for any reason.

13. ADVERSE REACTIONS; RECALLS.

13.1 Adverse Event Reporting. Customer shall inform Orthocrat, by telephone or facsimile, within forty-eight (48) hours after it concludes that use of or errors in the Software may threaten human safety or life, describing in reasonable detail the facts giving rise to such perceived threat. Unless otherwise required by applicable local laws, Customer shall advise Orthocrat of any such threat prior to making any report or filing with the U.S. Food and Drug Administration (“FDA”) or any comparable regulatory body in other countries.

13.2 Product Recall; Corrective Action. If Orthocrat believes that a corrective action with respect to the Software is desirable or required by law, or if the FDA or any other any governmental agency having jurisdiction shall request or order any corrective action with respect to the Software, including any recall, customer notice, restriction, change, corrective action, market action or Software correction, Orthocrat shall promptly notify Customer. Customer shall comply with all reasonable directions regarding such corrective action, including the return of the affected Software to Orthocrat at Orthocrat’s expense or promptly adopt and install any correction made available by Orthocrat.

14. DATA COLLECTION AND MONITORING.

14.1 Data Collection and Usage. During the term of this Agreement Orthocrat may collect anonymous usage data information about the use of the Software. Neither Customer nor any of Customer’s patients will be personally identified from this information. This anonymous usage data information shall become the sole property of Orthocrat and Orthocrat may use this information for Orthocrat’s purposes.

14.2 HIPAA. Orthocrat, as a “business associate,” as such term is defined by HIPAA, has implemented certain HIPAA policies and procedures and any data collected pursuant to this provision shall be de-identified in accordance with HIPAA. Notwithstanding this, Customer agrees and acknowledges that Orthocrat is not a “covered entity,” as defined by HIPAA, and as such, Orthocrat is not directly regulated by HIPAA. Further, it is Customer’s sole obligation to notify Orthocrat of any HIPAA or applicable State law provisions which may affect Orthocrat’s services or data collection activities as specified herein.

14.3 Opt-out. Customer may choose to opt out of this data collection at any time by notifying Orthocrat in writing. Such termination of data collection shall be executed within two (2) business days of receipt of notice.

15. MISCELLANEOUS.

15.1 Assignment. This Agreement may not be assigned, by operation of law or otherwise, by Customer without the prior written consent of Orthocrat. Any purported assignment is null and void. Orthocrat may assign or transfer this Agreement without Customer’s consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.2 Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties duly authorized representatives. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

15.3 Governing Law; Forum. This Agreement shall be governed by the laws of the State of Israel, without regard to its conflict of laws provisions or the United Nations Convention on the International Sale of Goods. Unless otherwise elected by Orthocrat in writing for a particular instance (which Orthocrat may do at its option), the sole jurisdiction and venue for actions related to the subject matter of this Agreement shall be the

competent courts of Tel-Aviv, Israel. Both parties consent to the jurisdiction of such courts with respect to any such actions.

15.4 Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing. Notice shall be considered effective on the earlier of actual receipt or: (a) the day following transmission if sent by facsimile followed by written confirmation; (b) one (1) day (two (2) days for international addresses) after posting when sent via an express commercial courier; or (c) ten (10) days after posting when sent via certified mail. Notice shall be sent to the address for each party as set forth in the Quotation, or at such other address as shall be given by either party to the other in writing. All notices to Orthocrat and Customer shall be addressed to the attention of: Chief Executive Officer.

15.5 Independent Contractors. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.

15.6 Publicity and Use of Name. Except as set forth in this Agreement, neither party shall, without the other party’s prior consent, use the names, service marks, trademarks or domain names of the other party or any of its affiliates.

15.7 Attorneys’ Fees. In the event any action is brought to enforce any provision of this Agreement or to declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney’s fees, incurred thereby. For purposes of this section only, “prevailing party” shall mean the party that prevails on a majority of causes of action in such dispute.

15.8 Compliance with Laws. Each Party agrees to comply with all laws and regulations, respectively applicable, in the performance of this Agreement. Both parties agree to act and perform with commercially reasonable efforts in the best interest of other party and at no time do, cause or permit to be done, published or said, any information, act or thing which is or may be detrimental to the best interests or business reputation of the other party. This provision shall survive the expiration of this Agreement for a period of one (1) year.

15.9 No Conflicts. Each party represents and warrants that neither this Agreement (or any provision hereof) nor the performance of or exercise of rights by such party under this Agreement, is restricted by, contrary to, or in conflict with any other agreement to which it may be a party.

15.10 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.11 Force Majeure. Except for Customer’s obligations to pay Orthocrat hereunder, neither party shall be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

15.12 Entire Agreement. This Agreement, the HIPAA Business Associate Agreement, and the Quotation, including all Schedules, Exhibits, and referenced documents, contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein.

15.13 Basis of Bargain. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for basis of this Agreement and that

they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.

15.14 English Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

****SCHEDULE A FOLLOWS****

Schedule A
Subscription and Support Services

1. **Fees.** For so long as Customer is current in the payment of all fees, including the Service Fees (described below) and complies with the other terms of the Agreement, Customer will be entitled to receive subscription and support services (“Subscription and Support Services”) as specified herein.
2. **Authorized Users:** Customer may authorize its staff, contractors or physicians with hospital privileges to use the Software as long as it is installed on Customer’s equipment and such equipment is connected to Customer’s network.
3. **Term and Termination:** Software Templates. Orthocrat’s provision of Subscription and Support Services to Customer will commence on the Effective Date and will continue for the initial subscription term set forth in the Quotation (“Subscription Term”). Subscription and Support Services will automatically resume at the end of the initial Subscription Term and any subsequent Subscription Term unless Customer has provided Orthocrat with a written notice of its intention to terminate the Subscription and Support Services with at least 60-day advance notice. The license granted with respect to the Software Templates is a subscription license, and such Software Templates may only be used during the Subscription Term. Therefore, **TERMINATION OF SUBSCRIPTION AND SUPPORT SERVICES OR FAILURE TO RENEW SUBSCRIPTION AND SUPPORT SERVICES WILL TERMINATE THE SUBSCRIPTION LICENSE GRANTED WITH RESPECT TO THE SOFTWARE TEMPLATES.** Customer understands and agrees that it will not receive any database and updates for the Software Templates following any termination or expiration of Subscription and Support Services; notwithstanding the foregoing, Customer will have the continuing right and ability to use the Software unless the Agreement is expired or terminated.
4. **Subscription and Support Services.** Subscription and Support Services means that Orthocrat will provide: (a) updates of the application “TraumaCad” and Software Templates, if any, and (b) telephone assistance with respect to the Software, including (i) clarification of functions and features of the Software; (ii) guidance in the operation of the Software; and (iii) error verification, analysis and correction to the extent possible by telephone. Customer will have access to the Subscription and Support Services Monday through Friday, 7:00 a.m. to 4:00 p.m. (US Eastern Time), except for holidays as observed by Orthocrat, and be guaranteed a 24 hour response time. Subscription and Support Services will be provided only with respect to versions of the Software that, in accordance with Orthocrat policy, are then supported by Orthocrat.
5. **Implementation and Training.** Orthocrat shall offer implementation and training services to Customer and/or its Authorized Users as ordered and specified in the Quotation to enable such personnel to operate the Software.
6. **Eligibility of Software.** Subscription and Support Services will not include services requested as a result of, or with respect to, the following, and any services requested as a result thereof will be billed to Customer at rates to be agreed upon in advance by the parties (or if now agreement is in place, then at Orthocrat’s then current rates):
 - 6.1. Accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of media not furnished by Orthocrat; operation of the Software with other media not meeting or not maintained in accordance with the manufacturer’s specifications; or causes other than ordinary use;
 - 6.2. Customer’s improper installation or use of the Software that deviates from any operating procedures established by Orthocrat in the applicable documentation, including if Customer does not update the Software Templates in accordance with Section 5 of the Agreement;
 - 6.3. Modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than Orthocrat or Orthocrat’s authorized representatives; or
 - 6.4. Software, hardware or other technology of any party other than Orthocrat, including software programs or routines made by Customer.
7. **Responsibilities of Customer.** Orthocrat’s provision of Subscription and Support Services to Customer is subject to the following:
 - 7.1. Customer shall provide Orthocrat with sufficient remote access to the computer terminals on which the Software is installed as well as to the server where the Software Templates are stored so that when Customer’s personnel request Subscription and Support Services assistance Orthocrat will have the necessary connectivity to render assistance.
 - 7.2. Customer shall provide supervision, control and management of the use of the Software. In addition, Customer shall implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the Software.

7.3. Customer shall document and promptly report all errors or malfunctions of the Software to Orthocrat. Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Orthocrat.

7.4. Customer shall maintain a current backup copy of all programs and data.

7.5. Customer shall properly train its personnel in the use and application of the Software and the equipment on which it is used.

7.6. In event Orthocrat issues an urgent fix/update, or recalls of one of the products in the Software Templates it will notify Customer by email, and provide instructions for the installation or removal as the case may be. Within a reasonable time after such receipt, Customer shall implement the urgent fix/update.

8. Renewal of Subscription and Support. The Service Fees are set forth in the Quotation. Orthocrat will abide by the Service Fees quoted in the Quotation for the second, third, and fourth year of the Agreement. If Customer elects not to terminate the Subscription and Support Services then all Subscription and Support Services for the Software shall end at the expiration of the then current Subscription Term.

9. Provision of Subscription Services. Orthocrat may delegate some or all of its duties of Subscription and Support Services to a third party supervised by Orthocrat.

*****END TERMS AND CONDITIONS*****