

Arbitration Agreement

NOTICE OF ARBITRATION AGREEMENT

This agreement provides that all disputes between you and Pompeii Surgical, LLC and its assigns will be resolved by **BINDING ARBITRATION**. You thus **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. • You are entitled to a **FAIR HEARING**, **BUT** the arbitration procedures are **SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT**.

• Arbitrator decisions are as enforceable as any court order and are subject to **VERY LIMITED REVIEW BY A COURT**.

FOR MORE DETAILS, PLEASE READ THIS ARBITRATION AGREEMENT CAREFULLY.

Throughout this Arbitration Agreement, Pompeii Surgical, LLC (“Seller”) is referred to as “we” and “us,” and all of Seller’s customers who sign this Arbitration Agreement are referred to as “you.”

1. Dispute Resolution by Arbitration: Any and all claims, controversies, or disputes arising out of or related in any way to your Loan Agreement Truth-in-Lending Disclosure, Note and Personal Property Security Agreement (the “Service Agreement”) entered into by you and us on the same date as this Arbitration Agreement shall be subject to binding arbitration pursuant to the under the Federal Arbitration Act. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act (the “FAA”), 9 U.S.C. Sections 1-6. This Arbitration Agreement applies to, without limitation, (1) all issues concerning the transaction in connection with which this Arbitration Agreement has been executed; (2) initial claims, counterclaims, cross-claims, and third-party claims, whether arising in law or equity, and whether based upon federal, state, or local law; contract; tort; fraud or other intentional tort; constitution, common law, or statute; (3) any issue as to whether any such claims, controversies, or disputes are subject to arbitration; and (4) any claims, controversies, or disputes that would otherwise be subject to class actions. This means that all claims, controversies or disputes that are the subject of class actions will also be subject to binding arbitration under the FAA and this Arbitration Agreement. **THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU OR US TO SERVE AS A PRIVATE ATTORNEY GENERAL, AS A REPRESENTATIVE, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

2. Consent to Arbitration: You and we understand and agree that you and we are choosing arbitration rather than litigation to resolve disputes. You and we understand that you and we have the right to litigate disputes but that you and we prefer to do so through arbitration. In arbitration, you may choose to have a hearing and be represented by counsel. **THEREFORE, YOU UNDERSTAND THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT, YOU VOLUNTARILY AND KNOWINGLY:**

- (a) **WAIVE ANY RIGHTS TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM OR DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;**
- (b) **WAIVE YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS COURT, RESOLVE ANY CLAIM OR DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; AND**
- (c) **TO THE EXTENT PERMITTED BY APPLICABLE LAW, WAIVE YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**

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2475 Paseo De Las Americas #1023, San Diego, CA, 92154

3. Opt-Out Right: You may elect to opt out of this Arbitration Agreement by doing any of the following things:

- (a) In the signature block at the end of this Arbitration Agreement, writing "Opt Out" in the signature block and initialing it; or
- (b) Sending or delivering written notice to the address on this Arbitration Agreement that you wish to opt out of this Arbitration Agreement. This written notice must be received by us by the end of the 30th calendar day after you sign this Agreement.

4. Procedure for Arbitration: Arbitration may be heard, at the claimant's election, by:

- The American Arbitration Association:
 - <https://www.adr.org> – (877) 495-4185– casefiling@adr.org
 - JAMS: (800) 352-5267 – <http://www.jamsadr.com/adr-arbitration/> – <http://www.jamsadr.com/contactus/fbGeneral.aspx?xpST=ContactForm>
- or any other arbitration forum as you and we may agree.

You may initiate an arbitration by contacting the arbitration forum of your choice at the contact points provided above. If you require assistance in a language other than English, or special services to accommodate a disability, please select an arbitration forum that can accommodate your needs.

(a) The arbitration shall be conducted by a single neutral, qualified and competent arbitrator selected by you and us under the rules of the arbitration forum selected. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitation, and shall honor all claims of privilege recognized by law. The Arbitration shall take place in a location determined by the arbitrator the federal district of your residence.

(b) If you file for arbitration under this Arbitration Agreement, the only fee you may required to pay is \$200, which is approximately equivalent to current court filing fees. We will bear all other of the arbitration, except for your attorneys' fees and costs. If we file for arbitration under this Arbitration Agreement, we will be required to pay all costs associated with the arbitration, except for your attorneys' fees and costs. However, if circumstances relating to the dispute (including, among other things, the size and nature of the dispute, the nature of the services that we have provided you, and your ability to pay) it would be unfair or burdensome for you to pay the arbitration filing fees, we will advance the initial filing, administration, and hearing fees required by the arbitrator, who will ultimately decide who will be responsible for paying those amounts.

(c) You can participate without representation or may choose to be represented by an attorney or other authorized representative, unless that choice is prohibited by applicable law. Because arbitration is a final, legally-binding process that may impact your legal rights, you may want to consider consulting an attorney. Each party, you and we, shall bear our own costs and expenses, including attorneys' fees, that we incur with respect to the arbitration.

(d) The Arbitrator shall allow for the discovery or exchange of non-privileged information relevant to the dispute, under the Arbitrator's supervision, prior to the arbitration hearing or submission of written presentations.

(e) Arbitrations may be decided upon written presentations, unless the amount of relief requested exceeds \$25,000. The Arbitrator may consider dispositive motions, but shall generally hold a conference call among all the parties prior to permitting any written motion. The Arbitrator may hold hearings in person or by conference call, and hearings generally will not exceed one day. If you or we show good cause, the arbitrator may schedule additional hearings within seven calendar days after the initial hearing.

5. Interpretation of this Arbitration Agreement: Any dispute as to the arbitrability of a claim shall be decided by the arbitrator. Any dispute as to the validity of the portion of this agreement that prohibits class arbitration shall be a matter for resolution by a court and not by the arbitrator. In the event that the court

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deems the portion of this agreement that prohibits class arbitration to be unenforceable, then the court shall retain jurisdiction over the dispute and this Arbitration Agreement shall be null and void.

6. Statutes of Limitations: All statutes of limitations that are applicable to any claim or dispute shall apply to any arbitration between you and us.

7. Attorneys' Fees: The arbitrator may, but is not required to, award reasonable expenses and attorneys' fees to the prevailing party if allowed by statute or applicable law and by the rules of the arbitration forum.

8. Awards: The Arbitrator shall issue the award in accordance with the rules of the arbitration forum. Unless you and we agree otherwise, The award shall provide the concise written reasons for the decision and shall apply any identified, pertinent contract terms, statutes and legal precedents. The arbitrator may grant any remedy, relief or outcome that you or we parties could have received in court.

9. Enforcement of Award: The award of the arbitrator shall be binding and final after fifteen (15) days have passed, and judgment upon the arbitrator's award may thereafter be entered in any court having jurisdiction.

10. Appeal Procedure: Within fifteen (15) days after an award by the arbitrator, any party may appeal the award by requesting in writing a new arbitration before a panel of three neutral arbitrators designated by the same arbitration service. The decision of the panel of three neutral arbitrators will be immediately binding and final.

11. Small Claims Court: Notwithstanding any other provision of this Arbitration Agreement, either you or we shall retain the right to seek adjudication in Small Claims Court of any matter within its jurisdiction. Any matter not within the Small Claims Court's jurisdiction shall be resolved by arbitration as provided above. Any appeal from a Small Claims Court judgment shall be conducted, at the appellant's option, either (a) in accordance with the provisions of applicable law (Sections 116.710-116.795 of the California Code of Civil Procedure), or (b) in accordance with Section 8 of this Arbitration Agreement.

BY SIGNING BELOW, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS ARBITRATION AGREEMENT

Buyer's Signature

Date