

Online Website Agreement and Authorization for Payments

The Xcel Sports Medicine Web Site (the "Service") is an on-line bill viewing and payment service provided by Xcel Sports Medicine.

Please read this Agreement carefully before accessing or using the Service. By accessing or using the Service, you agree to be bound by the terms and conditions below. If you do not accept the terms and conditions of this Agreement, you may not access or use the Service. Xcel Sports Medicine may modify this Agreement from time to time, and such modifications shall be effective immediately upon posting of the modified Agreement. By continuing to access or use the Service following such modifications, you agree to be bound by the modified Agreement. Xcel Sports Medicine has no obligation to notify users of the posting of a modified Agreement.

Payment Services. By accessing the Service, you authorize Xcel Sports Medicine (1) to establish and maintain your payment authorizations and (2) to process your payments according to your instructions.

Types of Payments and Payees. You may use the Service only to authorize the payment of bills owing to Xcel Sports Medicine. Payments that you authorize will be made from a bank or financial institution account (the "Transaction Account") that you designate. It is your responsibility to establish and maintain the Transaction Account and to pay any and all fees associated with the Transaction Account.

Timing. By providing Xcel Sports Medicine with a payment authorization under the Service, you authorize Xcel Sports Medicine to charge the Transaction Account to remit funds on your behalf to pay your bills owed to Xcel Sports Medicine. It is your responsibility to make timely payment authorizations, so that the funds will arrive at Xcel Sports Medicine before the date on which they are due. You should submit all payment authorizations to Xcel Sports Medicine at least three (3) business days before the actual due date for the bills (not the late date). A "business day" means any day other than Saturday, Sunday, a federal holiday, or any other day on which banks in the United States are not generally open for business. You shall bear the risk and the responsibility for paying any late charges or penalties resulting from the late receipt of any payment made under the Service; provided, however that Xcel Sports Medicine agrees to waive late charges and penalties resulting from late receipt of payment, in the event that your payment authorization was made more than (3) business days before the actual due date and the payment is late solely due to Xcel Sports Medicine's failure to promptly process your payment authorization.

Responsibility of Xcel Sports Medicine will use all reasonable efforts to process all your payment authorizations promptly and properly, provided the authorizations are actually received by Xcel Sports Medicine will not be responsible for any failure to process a payment authorization that is not actually and completely received by Xcel Sports Medicine for any reason, including user error, equipment malfunction, natural disasters or impediments, or inaccurate or incomplete information.

If Xcel Sports Medicine does not process a payment request on time or in the correct amount, Xcel Sports Medicine will be liable for your losses, but in no event shall Xcel Sports Medicine's liability exceed the amount of the affected payment authorization. However, Xcel Sports Medicine shall incur no liability fees if it is unable to complete a payment authorization initiated by you because of the existence of any one or more of the following circumstances:

- I. The Transaction Account does not contain sufficient funds to complete the transaction, or the transaction would exceed the credit limit applicable to the Transaction Account.
- II. You have not provided Xcel Sports Medicine with correct names or account information.
- III. Circumstances beyond Xcel Sports Medicine's control (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper transmission of your payment authorization and Xcel Sports Medicine has taken reasonable precautions to avoid those circumstances.
- IV. Xcel Sports Medicine fails to receive a full and complete payment authorization.
- V. You have made any false or materially misleading statement or representation in connection with any payment authorization.
- VI. The bank or financial institution maintaining the Transaction Account refuses or is unable to honor a payment request from Xcel Sports Medicine.

Bank or Financial Institution Limitations. In using the Service, you are requesting Xcel Sports Medicine to make payments for you from your designated Transaction Account. If your bank or financial institution is unable to process a transaction (for example, there are not sufficient funds in the Transaction Account to cover the transaction, or if funds in the account are unavailable for any reason), the transaction may not be completed. There may be limits or restrictions upon the number or frequency of payments that may be made from your Transaction Account under applicable law or under the terms of your agreement with the bank or financial institution maintaining the Transaction Account. Xcel Sports Medicine's obligations under the Service are subject to any such limits or restrictions, and Xcel Sports Medicine has no duty to notify you of any such limits or restrictions.

Charges. As a customer of the Service, you will not be charged by Xcel Sports Medicine for payment authorizations that you choose to send electronically.

DISCLAIMER OF WARRANTIES. XCEL SPORTS MEDICINE IS PROVIDING THE SERVICE "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON INFRINGEMENT. XCEL SPORTS MEDICINE DOES NOT WARRANT THAT THE SERVICE IS ERROR-FREE, OR THAT ACCESS TO AND USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

LIMITATION OF LIABILITY. IN NO EVENT SHALL XCEL SPORTS MEDICINE OR ANY LICENSORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE DELIVERY, PERFORMANCE, OR

USE OF THE SERVICE, WHETHER INCURRED BY YOU OR ANY THIRD PARTY, EVEN IF XCEL SPORTS MEDICINE OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OR MAY OTHERWISE KNOW OF THE POSSIBILITY OF SUCH DAMAGES. Some jurisdictions prohibit exclusion or limitation of liability for implied warranties or consequential or incidental damages, so the above limitation may not apply to you.

Assignment. You may not assign this Agreement to any other party. Xcel Sports Medicine may assign this Agreement to any directly or indirectly affiliated company. Xcel Sports Medicine may also assign or delegate certain of its rights and responsibilities under this Agreement to independent contractors or other third parties.

General. This Agreement is governed and shall be construed in accordance with the laws of the State of OH, excluding its choice of law rules. This Agreement constitutes the entire agreement and supersedes any prior agreements or understandings, oral or written, between Xcel Sports Medicine and you concerning the Service and may only be amended as provided herein. Failure or delay in enforcing any right or provision of this Agreement shall not be deemed a waiver of such provision or right with respect to any subsequent breach or a continuance of an existing breach. If any provision of this Agreement shall be held to be unenforceable that provision will be enforced to the maximum extent possible, and the remaining provisions of this Agreement will remain in full force and effect.