

## SURGICAL GUIDE EXTENDED SERVICE PLAN TERMS AND CONDITIONS

These Surgical Guide Extended Service Plan Terms and Conditions (these “**Terms and Conditions**”), along with the Product Quote (as defined below) and confirmation letter issued by Merit Medical Systems, Inc. (“**Merit**”), shall become and represent the entire agreement between the customer listed on the Product Quote issued by Merit (“**Customer**”) and Merit for the performance of the Services (as defined below) under this Surgical Guide Extended Service Plan (“**SGESP**”). The Product Quote shall list the Customer name, Customer address, facility address, Customer account number, console serial number, and guide serial number (“**Product Quote**”). Each of Customer and Merit are a “**Party**” and collectively, the “**Parties.**” Any purchase order issued by Customer in connection with the Services is subject to these Terms and Conditions.

**THE SERVICES ARE EXPRESSLY LIMITED TO AND MADE CONDITIONAL ON ACCEPTANCE OF THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS ARE HEREBY REJECTED. COMMENCEMENT OF THE SERVICES OR ACCEPTANCE OF PAYMENT BY MERIT AND ACCEPTANCE OF THE SERVICES OR PAYMENT FOR THE SERVICES BY CUSTOMER CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.**

### RECITALS

A. Merit offers certain fee-based extended services in the United States in conjunction with the purchase of certain Merit products.

B. Customer desires to purchase the Surgical Guide Extended Service Plan (the “**Services**”) for certain Merit products provided to Customer (the “**Surgical Guide(s)**”).

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

### EXTENDED SERVICES

1. General Terms and Conditions.

a. These Terms and Conditions contain, among other things, warranty disclaimers and limitations of liability.

b. The “**Effective Date**” of these Terms and Conditions will be the later of (1) the date Merit receives full payment from Customer for the Services, or (2) the expiration of Merit’s standard six (6)-month warranty period provided by Merit for the Surgical Guide(s).

c. These Terms and Conditions and the Services shall start on the Effective Date and shall automatically expire upon the expiration of the service period purchased (the “**Term**”). Notwithstanding the foregoing, Customer shall not be entitled to Services for any Surgical Guide(s) for which the Term has expired or is otherwise void. Services may extend beyond two (2)

years from the date of purchase, but Merit is not obligated to perform services if the Effective Date is more than two (2) years after the date the Surgical Guide(s) was purchased.

d. These Terms and Conditions may only be modified as set forth herein and any different or additional terms of any related purchase order, confirmation, or similar form, even if signed by the Parties after the Effective Date hereof, shall have no force or effect.

e. Merit reserves the right to (i) amend these Terms and Conditions from time to time, and (ii) stop supporting the Surgical Guide(s) and discontinue the Services one (1) year after discontinuing sales of the Surgical Guide(s) in the general market.

f. By purchasing the Services, Customer agrees it has received, read, understood and accepted these Terms and Conditions.

2. Scope of Services. Subject to these Terms and Conditions, Merit agrees to replace the Surgical Guide(s) during the Term.

3. Limited Warranty. Merit warrants during the Term that the Surgical Guide(s) will be free from defects in material and workmanship, subject to the exclusions listed in Section 5. This warranty is in lieu of, and excludes, all other warranties not expressly set forth herein, whether expressed or implied by operation of law or otherwise, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. The Services provided by Merit pursuant to these Terms and Conditions constitute Merit's exclusive obligation to the Customer in the event the Surgical Guide(s) does not conform to such warranty during the Term.

4. Services. Pursuant to these Terms and Conditions:

a. Subject to the exclusions below, Merit shall replace the Surgical Guide(s) that it determines becomes defective during the Term.

b. Merit shall provide qualified and trained representatives to perform the Services in a competent manner.

c. Customer agrees to ship the Surgical Guide(s) to Merit's service center to have the Services performed.

d. Merit will only provide the Services during standard business hours (8:00 AM – 5:00 PM, Monday through Friday, Mountain Time, excluding holidays).

e. Any replacement Surgical Guide(s) provided pursuant to these Terms and Conditions will be free of defects in material and workmanship at the time of shipment. All replaced Surgical Guide(s) shall be new Surgical Guide(s) and shall not be used or reconditioned.

f. Any Services provided under these Terms and Conditions are warranted for the longer of (1) the remainder of the Term; or (2) for ninety (90) days.

g. Services provided by Merit at Customer's request that exceed these Terms and Conditions will be provided to the Customer at Merit's applicable out of warranty hourly service rates.

h. All Surgical Guide(s) placed with a Customer must be covered under this SGESP.

i. If Merit must enter Customer's facilities to perform the Services, Merit's representatives will comply with Customer's security and operational requirements and its then-current visitation policies. Merit must comply with all applicable security, access, safety, and fire protection regulations, policies and procedures, and all applicable state and municipal safety regulations, building codes, or ordinances. Merit shall not be held responsible if compliance with the foregoing requirements prevent Merit from performing the services or contribute to any delay of the services.

5. Exclusions.

a. Disposable items, including, but not limited to SCOUT Reflectors, are expressly excluded from the Services provided under these Terms and Conditions.

b. Merit shall have no obligation and may, in its sole discretion, terminate and declare these Terms and Conditions null and void upon the occurrence or existence of any of the following:

i. Any intentional or negligent acts or omissions of Customer's employees or agents.

ii. Attempts to repair, alter, or access the internal components of the Surgical Guide(s) made by persons other than Merit authorized personnel, without prior approval of Merit.

iii. Misuse of the Surgical Guide(s), including, without limitation, use of the Surgical Guide(s) for any application or function for which it was not designed, or use contrary to any Surgical Guide(s) documentation.

iv. Damage to the Surgical Guide(s) from use of operating supplies, consumable parts or cleaning materials, not approved by Merit.

v. Damage resulting from the transportation or storage of Surgical Guide(s) by Customer, or other causes within the reasonable control of Customer.

vi. Damage resulting from fire, flood, earthquake, storm, hurricane or other natural disasters, war, terrorism, strike, lockout or other label dispute, or failure of the operation of electricity, water, telephones, internet service, or other utilities.

6. Initial Inspection. At its discretion, Merit may inspect the Surgical Guide(s). Any deficiencies discovered during the inspection that are not covered by Merit's standard six (6)-month warranty or these Terms and Conditions, which require service or repair, may be serviced or repaired and billed to the Customer at Merit's applicable out-of-warranty hourly service rates.

7. Terms and Conditions of Purchase. The purchase and use of the Surgical Guide(s) is subject to the terms and conditions of purchase agreed upon between Merit and Customer, including any agreement between Merit and a group purchasing organization that covers the sale of the Surgical Guide(s) to Customer, or if no other agreement applies, Merit's standard terms and conditions posted on Merit's website at [www.merit.com/merit-medical-terms-conditions/standard-terms-conditions-for-u-s-customers](http://www.merit.com/merit-medical-terms-conditions/standard-terms-conditions-for-u-s-customers) ("**Terms of Purchase**"). Except as otherwise set forth in these Terms and Conditions, the Terms of Purchase remain unchanged and shall govern all other matters between the Parties.

8. Integration and Amendments. These Terms and Conditions, the Product Quote and the confirmation letter issued by Merit constitute the entire agreement and understanding of the Parties in respect of the Services. Unless expressly stated in these Terms and Conditions, these Terms and Conditions, the Product Quote and the letter of confirmation supersede any communications, whether oral or written, between the Parties with respect to the Services. No modification, addition to, or waiver of the terms of these Terms and Conditions shall be binding unless made in writing and signed by a duly authorized representative of each Party in the form of an amendment.

9. Assignment. Neither Party may assign, transfer, convey, sublet or otherwise dispose of any of its right, title or interest in these Terms and Conditions or the Product Quote without the prior written approval of the other Party.

10. Pricing and Discounts. Pricing for the Services must be fully and accurately reported on all claims for payment filed with third party payors, including Medicare, Medicaid and state agency cost reports, in accordance with all applicable federal and state laws and applicable agreements. If Customer is a cost reporting entity, Customer should report the actual prices paid net of the discount received pursuant to these Terms and Conditions on Medicare, Medicaid and all other federal healthcare program cost reports, in the fiscal year in which the discount is earned, or the following year. Customer should also retain a copy of these Terms and Conditions, and communications regarding these Terms and Conditions, together with the invoices for purchase and permit agents of the U.S. Department of Health and Human Services or any state agency access to such records upon request.

11. Confidentiality. Certain confidential business information provided by one Party to the other will not be disclosed to any person, except (i) to physicians, attorneys, accountants and auditors who have agreed in writing not to use, disclose, or rely on that information for any purpose other than advising that Party, or (ii) as permitted under Section 10 of these Terms and Conditions. The provisions of this Section shall survive any termination or expiration of these Terms and Conditions.

12. Waiver and Enforceability. Except as otherwise provided in these Terms and Conditions, any breach of these Terms and Conditions by a Party may only be waived if agreed to in writing signed by both Parties. Such waiver shall not operate as a waiver of or estoppel with respect to, any subsequent or other breach of these Terms and Conditions. The invalidity or unenforceability of any provision or portion hereof will not affect the validity or enforceability of the other provisions or portions thereof.

13. Notices. All notices and other communications required or permitted to be given under these Terms and Conditions shall be in writing and shall be deemed to have been duly given, made, and received only when (i) delivered personally, by messenger, or by recognized courier service such as Federal Express, (ii) sent by electronic facsimile with proof of confirmation, or (iii) four (4) days following the day when deposited in the U.S. Mail by registered or certified mail, postage prepaid, return receipt requested, address as set forth on the purchase order or Product Quote for Customer and below for Merit:

Merit Medical Systems, Inc.  
1600 West Merit Parkway  
South Jordan, UT 84095  
Attention: Legal Department

14. Limitation of Liability. Neither Party shall have obligations or liabilities to the other Party, or any other person, for loss of profits, loss of use, or incidental, special, or consequential

damages, even if such Party has been advised of the possibility thereof, arising out of or in connection with its performance contemplated hereunder, or any failure or delay in connection with any of the foregoing. Without limiting the generality of the foregoing, neither Party shall be liable for personal injury or property damage resulting from the performance of its obligations hereunder, except for bodily injury, death, or property damage caused solely and directly by the gross negligence or intentional misconduct of the other Party or any of its employees or agents. In no event shall the liability of a Party arising in connection with the Services exceed the actual amount paid by Customer to Merit for the Services. Merit assumes no liability with respect to Surgical Guide(s) use by a non-qualified physician or use contrary to the Surgical Guide(s) labeling and related documentation provided by Merit.

15. Books and Records. The following language is included because of the possible application of Section 1861(v)(1)(I) of the Social Security Act (as amended) to these Terms and Conditions; but if that section should be found inapplicable to these Terms and Conditions, then this clause shall be deemed not to be part of these Terms and Conditions and shall be void. Until the expiration of ten (10) years after the furnishing of the Surgical Guide(s) and Services under these Terms and Conditions, Merit shall make available, upon written request, to the Secretary of Health and Human Services or to the Comptroller General, or any of their duly authorized representatives, these Terms and Conditions, the Product Quote and the books, documents and records of Merit as are necessary to certify the nature and extent of the Surgical Guide(s) and Services provided under these Terms and Conditions. Merit shall give Customer immediate notice upon receipt of any request from the Secretary of HHS or the Comptroller General of the United States or any of its duly authorized representatives for disclosure of such information and provide Customer with a copy of any materials furnished by Merit to the Secretary of HHS or the Comptroller General of the United States.

16. Contact Information. Customers should contact Merit Customer Service at (866) 920-9444 with any questions regarding the Surgical Guide(s) or Service.

**[CUSTOMER NAME]**

**MERIT MEDICAL SYSTEMS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_