



## TERMS AND CONDITIONS OF SERVICE

These *Terms and Conditions of Service* ("**Terms and Conditions of Service**") combined with the specific terms included on the accompanying equipment service quote or on the attached pages issued by ZEISS ("**Quote**") constitute an agreement ("**Agreement**") with Carl Zeiss Meditec, Inc. ("**ZEISS**") and the customer named on the Quote ("**Customer**") regarding the maintenance of ZEISS Equipment (as defined below). In the event that the terms on the Quote specifically conflict with these Terms and Conditions of Service, the terms of the Quote will supersede the conflicting terms contained in these Terms and Conditions of Service. ZEISS's agreement to provide Services is conditioned on Customer's assent to this Agreement and is limited to acceptance of this Agreement, and no specific condition or terms issued by the Customer which may appear on the purchase order or on any document communicated by the Customer, shall prevail over this Agreement. All such conditions and terms are objected to and rejected. Provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement. For the avoidance of doubt, the Customer's general terms and conditions are expressly excluded.

1. **ZEISS Duties.** Starting on the Contract Start Date (as defined on the Quote) (the "**Effective Date**") and for the duration of the Term (as defined below), ZEISS will provide the repair and maintenance services set forth in this Section 1 subject to the terms contained herein.

1.1. **Covered Services.** Unless expressly agreed otherwise in writing between Customer and ZEISS, ZEISS agrees to provide certain services as are further described on the Quote which may include hardware repair work, maintenance work, inspections, improvements, modifications, technical support and other services ("**Services**") for the equipment listed on the Quote ("**Equipment**"). The price on the Quote includes all parts, labor and travel expenses, except those items listed under "Exclusions from Services" (as defined in Section 2 below) or stated elsewhere in this Agreement.

1.2. **Service Hours and Response Times.** The Services shall be performed from 8:00 AM to 5:00 PM local time Monday through Friday, except ZEISS recognized holidays ("**Normal Working Hours**"). ZEISS will commence work in connection with this Agreement within a commercially reasonable period of time based on the contract type purchased by Customer. If the Customer requests Services to be performed outside the Normal Working Hours, such Services will be furnished on a commercially reasonable efforts basis. There will be a minimum labor charge of two (2) hours for all Services performed outside of Normal Working Hours. Service response time will vary depending upon factors including, but not limited to, distance from the nearest ZEISS service center, workload, weather conditions and the critical nature of Customer's request for Services. ZEISS does not make any guarantees or representations regarding response times following Customer's request for Services.

1.3. **Parts; Warranty Disclaimer for Parts.** ZEISS will provide all replacement parts necessary to repair, and, if Planned Maintenance Services are provided under this Agreement as described in Section 1.5 below, maintain the Equipment, with the exception of those parts listed in "Exclusions from Services" under Section 2 below. Replacement parts will be either new or certified refurbished parts, which in ZEISS's judgment, are of equal performance capability and quality to new parts. All parts will be furnished on an "exchange basis" and any replaced parts shall become the sole property of ZEISS. If ZEISS, at its sole discretion, replaces any parts or Equipment with new or certified refurbished parts or Equipment, any replaced parts or Equipment shall become the sole property of ZEISS. ALL PARTS OR EQUIPMENT PROVIDED BY ZEISS UNDER THIS AGREEMENT ARE FURNISHED ON AN "AS IS" BASIS, AND ZEISS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. This warranty disclaimer does not affect any Equipment warranties available to Customer under any Equipment purchase agreement(s) for ZEISS Equipment purchased by Customer from ZEISS, or under any other Equipment purchase agreement(s) for non-ZEISS Equipment on which Services are provided under this Agreement.

1.4. **Customer Location; Services Outside of Normal ZEISS Working Hours.** This Agreement will only apply to Services rendered in the 48 conterminous states of the United States. If Customer requests any Services to be performed outside the forty-eight (48) conterminous states, Customer must schedule the Services in advance with ZEISS by giving ZEISS five (5) business days' prior written notice of such service request, and ZEISS may agree to provide such Services in its sole discretion. If the Customer requests a Services response outside of ZEISS's Normal Working Hours, Customer will pay all additional costs arising in connection with ZEISS personnel traveling to Customer's location, and other costs arising out of Services provided outside of ZEISS's Normal Working Hours. If ZEISS, at its sole discretion, agrees to perform Services requested outside the forty-eight (48) conterminous states or outside of ZEISS's Normal Working Hours, such Services shall be subject to an individual schedule which shall contain, without limitation, a description of the Services, the Services rate(s), the Services period and hours and payment terms (each schedule a "**Work Order**"). All Work Orders are subject to the terms and conditions of this Agreement.

1.5. **Planned Maintenance.** ZEISS may provide certain Planned Maintenance visits as may be further described on the Quote. If Planned Maintenance is included in this Agreement, such Planned Maintenance may be performed in conjunction with a service call at ZEISS's sole discretion. ZEISS's obligation to provide a Planned Maintenance visit will be considered fulfilled if, after two (2) attempts to schedule the visit, the Customer cannot accommodate the scheduling request. Planned Maintenance visits purchased separately from any other Services will be performed at a mutually agreed upon time while a ZEISS services representative is in Customer's area, and will be provided at Customer's facilities as specified on the Quote during Normal Working Hours. Customer will be charged the prevailing billing rate for the Planned Maintenance unless otherwise specified on the Quote.

1.6. **Telephone Support Services.** At ZEISS's sole discretion, ZEISS may troubleshoot with the Customer by telephone to resolve a problem in lieu of traveling to Customer's facility to provide Services under this Agreement.

1.7. **Additional Services.** ZEISS may provide Customer with certain additional services that are not part of the Services, including without limitation equipment moving, data transfer support, damage coverage, and mobile facility support and any services which are either Excluded Services or other services as agreed to by ZEISS and Customer ("**Additional Services**"). The Additional Services are charged separately by ZEISS to Customer. The Additional Services will be described on the Quote or in an individual Work Order which shall contain without limitation, a description of the services, the services rate(s), the services period and hours and payment terms. All Work Orders are subject to the terms and conditions of this Agreement.

2. **Exclusions from Services.** ZEISS does not have any obligation to provide Services in connection with the activities and for the equipment set forth below in this Section 2 ("**Exclusions from Services**"). If ZEISS is dispatched, and if ZEISS agrees to perform services on the excluded equipment

or in connection with excluded activities under this Section 2, such services shall be considered Additional Services as defined in and subject to the terms of subsection 1.7 of this Agreement.

2.1. Misuse. ZEISS will not be responsible for Services resulting from misuse of the Equipment, including without limitation (i) any intentional acts or negligence of Customer's employees, agents, representatives or invitees, (ii) anyone other than ZEISS authorized personnel attempting to repair or service the Equipment, (iii) use of special attached or devices not provided by ZEISS, (iv) misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it was not designed, or (v) use of unauthorized software and/or accessories (as defined below in subsection 2.6).

2.2. Events Beyond ZEISS's Control. ZEISS will not be responsible for Services resulting from damage caused by liquid contact (other than as a result of defect in material and workmanship), fire, earthquake or other external cause beyond ZEISS's reasonable control.

2.3. Consumables. The replacement and/or installation of Consumable Items (as defined below) are excluded from this Agreement. "Consumable Items" means goods used by individuals and businesses that must be replaced regularly because they wear out or are used up, including but not limited to bulbs, flashtubes, lamps, filters, paper, printer ribbons, floppy disks, back-up media, user manuals, test chambers, test eyes, and test fixtures.

2.4. Cosmetic Work. Painting or refinishing work, or the furnishing of the materials for this purpose, are excluded from Services under this Agreement.

2.5. Moved Equipment. Services required in order to repair damage resulting from Customer's transportation of the Equipment are excluded from Services under this Agreement.

2.6. Unauthorized Use of Software and/or Accessories. The loading of third-party software and/or accessories without prior written approval by ZEISS will render ZEISS's obligations under this Agreement void. Unauthorized software includes, but is not limited to, device drivers not approved by ZEISS.

2.7. Data File Transfer and Recovery. Patient data file transfer, restoration and recovery are excluded from Services under this Agreement.

2.8. FORUM Support. ZEISS FORUM customers may purchase a FORUM support plan.

3. Acceptance. The Services shall be deemed to have been accepted by Customer if Customer does not issue a notice of refusal of acceptance within thirty (30) days after the completion of Services.

#### 4. Responsibilities of Customer.

4.1. Access to Equipment. Customer will provide ZEISS necessary access to the Equipment so that ZEISS may perform the Services under this Agreement. Customer may be billed at prevailing labor rates for lost time and travel if ZEISS is not permitted reasonable access to the Equipment. Customer will provide ZEISS service personnel with unsolicited information regarding problems which have occurred and any features specific to the Equipment to be serviced. Customer shall inform the ZEISS service personnel of any safety and other regulations at Customer's premises before the Services are carried out and shall provide sufficient explanations.

4.2. Billing Authorization. A Customer representative with signature authority must be available to accept the satisfactory completion of work performed and to authorize billing for each Services event, including Services events provided outside of Normal Working Hours.

4.3. Patient Data Files. Maintenance, archival storage, data security and backup of all patient data files are the sole responsibility of Customer.

4.4. Equipment Location. The Equipment will be located at Customer's facilities as described on the Quote of this Agreement. Any subsequent Equipment resale or removal to a new location without ZEISS's prior approval may result in immediate cancellation of this Agreement at ZEISS's sole discretion.

#### 5. Payment Terms.

5.1. Payment; Taxes. Customer will pay the fees for the Services performed by ZEISS as described on the Quote, a Work Order or as otherwise specified in this Agreement. Customer must pay the total payment amount due for this Agreement including without limitation all applicable federal, state and local taxes. ZEISS invoices are payable within thirty (30) days after date of invoice. Customer shall make all payments hereunder in U.S. dollars.

5.2. Deductible. If Customer is obligated to pay any fixed fee per Services call or any deductible under this Agreement, such fixed fee or deductible is due at the time that the Services are rendered.

5.3. Late Fees. If ZEISS fails to receive any payment or any other amount due by Customer hereunder within ten (10) calendar days after its due date, Customer will pay, in addition to the amount of each such payment, a late payment charge of ten percent (10%) of such past due payment or the highest interest rate allowed by applicable law, whichever is less. ZEISS may engage a third party, including without limitation one or more of its affiliates, to bill for and collect any or all amounts due and payable by Customer hereunder. All fees referenced herein are exclusive of applicable sales, use and other taxes, which will be added to the relevant invoice provided by ZEISS and shall be payable by Customer to ZEISS, except for income taxes due by ZEISS in respect of such costs.

6. Customer's Acts or Omissions. If ZEISS's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, ZEISS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

#### 7. Limited Warranty; Disclaimer of Warranty; Limitation of Liability.

7.1. Limited Warranty; Disclaimer of Warranty. ZEISS warrants that the Services described in Section 1 of this Agreement will be provided in a workmanlike manner. ZEISS shall not be liable for a breach of the warranty set forth in this Section 7.1 unless Customer gives written notice of the defective Services, reasonably described, to ZEISS within ten (10) business days of the time when Customer discovers or ought to have discovered that the Services were defective. ZEISS MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO SERVICES PROVIDED BY ZEISS PURSUANT TO THIS AGREEMENT.

7.2. Customer Remedies. If ZEISS breaches any warranty or obligation under this Agreement, its sole obligation will be to make all necessary adjustments, repairs and replacements in accordance with the terms of this Agreement and to replace any defective parts installed under this Agreement. ZEISS shall have no liability for damages under this Agreement in connection with any non-functioning or malfunctioning unit of Equipment unless such Equipment fails to function properly for a period of thirty (30) consecutive days. If the Equipment fails to function properly for such thirty (30)

day period, ZEISS's total liability under this Agreement shall be limited to direct damages in an amount not to exceed the amount paid by Customer attributable to such non-functioning or malfunctioning Equipment for the period which the Equipment fails to function properly.

7.3. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS OR ANY OTHER AGREEMENT BETWEEN ZEISS AND CUSTOMER, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS, DAMAGE, LOSS OF DATA, OR INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, REVENUES, OR BUSINESS OPPORTUNITY (ALL OF WHICH EACH PARTY EXPRESSLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW), EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT BASED UPON EXPRESS WARRANTY OR IMPLIED WARRANTY (EXCEPT FOR THE OBLIGATIONS ASSUMED BY ZEISS UNDER THE LIMITED WARRANTY CLAUSE), CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER CAUSE OF ACTION ARISING IN CONNECTION THIS AGREEMENT OR WITH THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF THE PRODUCT(S), AND EVEN IF RECIPIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 7 ("WARRANTY; DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY"), ZEISS'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

8. **Confidentiality.** Each party ("**Receiving Party**") acknowledges that, in the course of the performance of this Agreement, it may learn certain confidential and proprietary information about the other party's ("**Disclosing Party**") business and operations including, but not limited to, products, marketing, distribution, technology, know-how, charges, pricing, intellectual property rights, software, tools, business information, or customer data, information or personal health information ("**Confidential Information**"). Receiving Party agrees that it will keep all Confidential Information strictly confidential, and that it will not use Confidential Information for any other purpose other than to exercise its rights and responsibilities under this Agreement, will not resell, transfer, or otherwise disclose such information to any third party without the Disclosing Party's specific, prior written consent. Receiving Party may disclose Confidential Information to employees, contractors and affiliates of Receiving Party that have a need to know, solely for the purpose of assisting Receiving Party to facilitate the transactions contemplated hereunder, and only subsequent to such persons having executed nondisclosure agreements with confidentiality obligations at least as restrictive as those contained herein. Receiving Party agrees that Disclosing Party is and shall remain the exclusive owner of Confidential Information disclosed hereunder and all patent, copyright, trade secret, trademark and other intellectual property rights therein. Receiving Party shall, upon the request of Disclosing Party, return to Disclosing Party or destroy all drawings, documents and other tangible manifestations of Confidential Information received by Receiving Party pursuant to this Agreement (and all copies and reproductions thereof). The obligations in this provision shall remain in effect following termination of this Agreement. Specifically excluded from the confidentiality obligations is all information that: (i) was in the Receiving Party's legitimate possession prior to receipt of such information from Disclosing Party; (ii) is independently developed by personnel of Receiving Party without any use of or reference to Confidential Information; (iii) was rightfully received from third parties and, to the best knowledge of Receiving Party, without an obligation of confidentiality to Disclosing Party; (iv) is in the public domain through means other than by breach of this Agreement by Receiving Party; or (v) is disclosed pursuant to any judicial or government request, requirement or order, provided that the Receiving Party takes reasonable steps to provide the Disclosing Party the ability to contest such request, requirement or order. The parties acknowledge that Confidential Information has competitive value and that irreparable damage may result to the Disclosing Party if the Receiving Party discloses Confidential Information. The parties agree that legal proceedings at law or in equity, including without limitation injunctive relief, are appropriate in the event of a breach hereof without the duty of posting bond.

#### 9. **Term and Termination.**

9.1. **Term.** The Agreement shall be in effect for one (1) year following the Effective Date (the "**Initial Term**") and shall automatically renew for consecutive periods of one (1) year (each a "**Renewal Term**"). The Initial Term of this Agreement and any Renewal Term(s) shall be collectively called the "**Term**." ZEISS shall have the right to increase the fees for the Services for each Renewal Period by no more than 5% from the Initial Term or previous Renewal Term, as applicable, without notice. After the Initial Term, either party may terminate this Agreement by giving at least thirty (30) days' prior written notice of termination.

9.2. **Termination on Breach.** Either party may terminate this Agreement, with notice and thirty (30) days' opportunity to cure, or immediately if, in the non-breaching party's sole and reasonable opinion, no cure is practicable, if the other party refuses to or is unable to perform its obligations under this Agreement or is in breach of any material provision of this Agreement.

9.3. **Refund on Termination.** If either party terminates this Agreement, the Customer will be eligible for a refund equal to the prorated amount of any pre-paid fees for the Term.

9.4. **Effects of Termination.** Sections 5.1 ("Payment; Taxes"), 5.3 ("Late Fees"), 7.3 ("Limitation of Liability"), 8 ("Confidentiality"), 9.4 ("Effects of Termination"), and 10 ("Miscellaneous") shall survive any termination of this Agreement.

#### 10. **Miscellaneous.**

10.1. **Assignment.** Customer may not assign its rights and obligations under this Agreement in full or in part by operation of law or otherwise, without ZEISS's prior written consent. ZEISS may freely assign this Agreement.

10.2. **Waiver.** The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the party in writing. If either party fails to exercise a right or insist on strict performance under this Agreement on one (1) occasion, that party will not be precluded from exercising that right, or insisting on performance of that obligation on any other occasion; nor will this Agreement be modified in any way by such failure to exercise a right or insist on strict performance under this Agreement.

10.3. **Entire Agreement.** This Agreement constitutes the final and complete agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the purchase or sale of the Services. The terms and conditions of this Agreement shall prevail over any variance with the terms and conditions of any order submitted by the Customer for the Services, regardless of any provisions to the contrary. No claimed additions to or modifications or amendments of this Agreement, nor any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the party against whom the same may be asserted.

10.4. **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.

10.5. **Governing Law.** This Agreement will be interpreted under the substantive laws of the State of New York. A court of competent jurisdiction will determine the venue and procedural laws applying to any conflict arising from this Agreement. EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY FOR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION COUNTERCLAIMS REGARDING SUCH DISPUTES, CLAIMS RELATED TO THE PARTIES' NEGOTIATIONS AND INDUCEMENTS TO ENTER INTO THIS AGREEMENT, AND OTHER CHALLENGES TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. THE WAIVER IN THE

PRECEDING SENTENCE APPLIES REGARDLESS OF THE TYPE OF DISPUTE, WHETHER PROCEEDING UNDER CLAIMS OF CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR ANY OTHER THEORY.

10.6. Force Majeure. ZEISS shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from causes beyond the reasonable control of ZEISS, including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor or material shortages, embargo, failure or delays in transportation, unavailability of components or parts used in connection with the Services, acts of God, acts of the federal or a foreign government or any agency thereof, acts of any state or local government or any agency thereof, and judicial action. Should such a delay or failure occur, ZEISS may reasonably extend delivery of the Services or, at its option, cancel the Agreement in whole or part without any liability other than to return any unearned deposit or prepayment.

10.7. Discount Disclosure. All rebates and other discounts provided under this Agreement are intended to comply with the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute safe harbor regulations) or other applicable laws or regulations, the Customer shall fully and accurately reflect in cost reports or other submissions to federal healthcare programs all discounts provided under this Agreement and, upon request by the Secretary of the U. S. Department of Health and Human Services or a state agency, shall make available information provided to the Buyer by ZEISS concerning the discounts.