



## Cellfina® System Service Contract

This Cellfina® System Service Contract (“Service Contract”) is entered into by and between Merz North America, Inc. (“Merz”) and the Service Contract customer identified below (“Customer”) as of the Effective Date set forth below. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, Merz and Customer hereby agree to the following terms and conditions:

**Services Provided.** Merz shall provide the following services under this Service Contract:

- **Repair/Replacement Services in the Event of Defects:** If, during the one-year period beginning on the expiration of Customer’s Limited Warranty:
  - one or both of Customer’s Cellfina motor modules ceases to function in accordance with the written technical specifications and standards set forth in the Cellfina System User Manual (such specifications, the “Merz Specifications”), then Merz shall facilitate the repair or replacement of such motor module(s) at no cost to Customer (including shipping charges);
  - the suction pump provided as part of the Cellfina System (such items hereinafter, collectively, the “Accessories” for purposes of the Service Contract) ceases to function in accordance with the written technical specifications and standards set forth in the applicable original equipment manufacturers’ manual(s) (the “OEM Specifications”), then Merz shall facilitate the repair or replacement of the defective Accessory at no cost to Customer (including any and all parts, labor, and shipping charges).
- **Replacement Services at the End of Useful Life.** In addition to the above, if, during the one-year period beginning on the expiration of Customer’s Limited Warranty, one or both of Customer’s Cellfina motor modules reaches the end of its useful life (as defined in the Cellfina Instructions for Use), then Merz shall facilitate the replacement of such motor module(s) at no cost to Customer (including shipping charges), **provided, however**, that Customer may receive a maximum total of two (2) replacement motor modules during the two-year period beginning on the Cellfina System Limited Warranty Effective Date and ending on the expiration of the Cellfina System Service Contract.

FOR ILLUSTRATION PURPOSES ONLY, if Customer purchases a Cellfina® System with a Cellfina System Service Contract, below are examples of events which would be covered, and the types of coverage provided:

<b>Example Coverage Event</b>	<b>Event Occurs During:</b>	<b>Customer’s Coverage</b>
Both motor modules reach their end of 50-use life.	Limited Warranty Term	Customer is entitled to <u>one</u> replacement motor module in accordance with the terms of the Cellfina System Limited Warranty.
One motor module reaches its end of 50-use life.	Service Contract Term	Customer is entitled to <u>one</u> replacement motor module in accordance with the terms of the Service Contract.
Both motor modules reach their end of 50-use life.	Service Contract Term	If Customer <u>has not</u> received a replacement motor module during the Limited Warranty Term, then Customer is entitled to <u>two</u> replacement motor modules in accordance with the terms of the Service Contract.  If Customer <u>has</u> already received a replacement motor module during the Limited Warranty Term, then Customer is entitled to <u>one</u> replacement motor module in accordance with the terms of the Service Contract.
A motor module, the suction pump or the cart is determined to be defective.	Limited Warranty Term	Customer is entitled to repair/replacement (as applicable) in accordance with the terms of the Limited Warranty.
A motor module or the suction pump is determined to be defective.	Service Contract Term	Customer is entitled to to repair/replacement (as applicable) in accordance with the terms of the Service Contract.

### Additional Service Contract Terms and Conditions

The two motor modules and the Accessories are hereinafter referred to as the “Components”; the Merz Specifications and the OEM Specifications are hereinafter referred to as the “Specifications”.

The provision of the above services pursuant to this Service Contract is subject to the following terms and conditions: (1) this Service Contract is personal to Customer, and is non-transferrable; (2) the Service Contract applies only to Components provided with Cellfina Systems which are owned and operated in the United States; (3) the Cellfina System (including all Components) must be operated at all times in accordance with the applicable Specifications; and (4) Customer must notify Merz of any Service Contract-covered event promptly upon the occurrence of the event. Any delay in notification exceeding 72 hours from occurrence of the covered event will void Merz’s obligations under the Service Contract.

Further, the Service Contract does not cover damage to Components resulting from misuse, abuse, accident, or other use not strictly in accordance with the applicable Specifications. The Cellfina System is comprised of integrated pieces of sensitive, calibrated, electronic, plastic and metal parts and can be easily damaged if not handled carefully. Causing the Components (or any other part of the Cellfina System) to come in contact with foreign substances or foreign objects can cause irreparable damage, which events are not covered by this Service Contract. The foregoing are for illustration only and are not meant as an exhaustive list of events that would not be covered under the Service Contract because of misuse, abuse, accident, or other use not strictly in accordance with the applicable Specifications.

Merz is the only authorized provider of the Equipment and disposables. For regulatory compliance, medical oversight, and training purposes, Merz documents and tracks the Equipment and disposables delivered to each Customer site. Equipment and disposables must be operated under the direction of a physician, in accordance with the Instructions for Use and Customer’s applicable state medical regulations. **Merz prohibits the re-sale or rental of Equipment or disposables**, regardless of whether such products are new or used, or are sold within or outside the United States. **Sale or transfer of Equipment or**



**disposables to third parties for uses unauthorized by Merz (e.g., refurbishment, modification, etc.) is also prohibited.** Customer acknowledges that refurbished products are not FDA-cleared, do not meet the strict manufacturing and quality controls of Merz, and may result in patient safety concerns. If Customer uses refurbished products, Customer assumes full liability for any adverse event that occurs. In addition, because it is unable to regulate the quality of refurbished products, Merz is required to notify the FDA of any known violations, as well as any individuals suspected of being involved in these unlawful practices. Customer hereby further acknowledges and agrees that the Equipment and disposables are covered by valuable intellectual property owned by or licensed to Merz, including one or more valid United States patents. Customer's purchase of Cellfina products shall not be construed as a grant of any other rights in or to the intellectual property covering such products. Customer acknowledges that Customer's use of Cellfina products other than those purchased directly from Merz, or unauthorized sale/transfer of Cellfina product(s) to third parties, would cause immediate, material, and irreparable harm to Merz. **In the event of any violations of this section, then, in addition to any other remedies available to Merz, Merz may refuse to sell future Cellfina products to Customer or refuse to service Cellfina Systems. Additionally, any use of Cellfina products not purchased directly from Merz will automatically void Customer's limited warranty and any applicable service contract.**

Customer acknowledges and agrees that this Service Contract is governed by North Carolina law, with venue in Wake County, North Carolina; Customer expressly waives any objections based on conflict of law principles or inconvenient forum.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE CELLFINA SYSTEM IS PROVIDED TO CUSTOMER "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND. MERZ EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERZ SHALL HAVE NO LIABILITY TO CUSTOMER, ITS AFFILIATES, OR ITS END CUSTOMERS, OR TO ANY OTHER THIRD PARTY, FOR ANY DAMAGES, INCLUDING DAMAGES RESULTING OR ALLEGED TO RESULT FROM ANY DEFECT, ERROR, OR OMISSION IN THE SYSTEM, OR AS A RESULT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. IN NO EVENT SHALL MERZ BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) SUFFERED BY CUSTOMER OR ITS AFFILIATES OR ANY OTHER THIRD PARTY ARISING OUT OF OR RELATED TO THE AGREEMENT, EVEN IF MERZ HAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

By signing below, Customer represents that the below signatory is fully authorized to sign the Service Contract on behalf of Customer, and Customer confirms that it has carefully read and agrees to abide by the terms and conditions of this Service Contract.

Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

**CUSTOMER:**

Company	Contact Name
Address	Email address
City State Zip	Phone Fax

Should you have any questions, please contact us ([mymerzsolutions@merz.com](mailto:mymerzsolutions@merz.com) or 1-844-4MYMERZ).

	Item Number(s)	Serial Numbers
<b>What is Covered by this Service Contract?:</b>	Suction Pump	
	Cellfina Motor Module Cellfina Motor Module	
<b>Effective Date of Service Contract:</b>		
<b>Cost</b>		Initials:
<b>Method of payment</b>	<input type="checkbox"/> Use card on file	Last 4 digits
	<input type="checkbox"/> Use new card	Card Number Expiry (MM/YY)
	<input type="checkbox"/> Other	Explain: