



Ulthera® System Service Contract

This Ulthera® 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, any piece of Equipment ceases to function in accordance with the written technical specifications and standards set forth in the Ulthera System User Manual (such specifications and standards, the “Specifications”), then Merz shall facilitate the repair or replacement of such Equipment at no cost to Customer (including any and all parts, labor, and shipping charges). “Equipment”, as used herein, means any one or more of the following: the Ulthera control unit, the Ulthera hand piece, and/or the Ulthera power cord. The Ulthera transducers and the Ulthera cart are expressly excluded from the definition of Equipment, and from the scope of this Service Contract.
- *Recertification Services.* During the period beginning on Customer’s purchase of the Service Contract and ending upon expiration of Customer’s Service Contract, and upon Customer’s request, Merz may examine, test, and recertify the Equipment. Alternatively, Customer may send a copy of their Ulthera System support log to Merz, and Merz will confirm whether or not the Equipment is functioning in accordance with the Specifications.
- *Provision of Software Updates and Upgrades.* During the one-year period beginning on the expiration of Customer’s Limited Warranty, Merz will provide to Customer any software update(s) or upgrade(s) which are offered generally to all Ulthera customers free of charge and which enhance Ulthera System functionality or allow access to new, FDA-cleared procedures. The foregoing does not include any Ulthera System upgrades to diagnostic-quality imaging which would require a separate transducer.
- *Replacement/Loaner Ulthera System in the Event of Defects.* If Merz is unable to resolve an Equipment defect remotely through phone or electronic troubleshooting, Merz will provide Customer with a loaner or replacement device to ensure continued operation at Customer’s site. Merz will cover shipping charges to and from the Customer’s site on the loaner device and on Customer’s inoperable Equipment. If a loaner is provided, upon completion of repair, Merz will redeliver the Equipment and arrange for pickup of the loaner device. Merz reserves the right to charge Customer list price for any loaner devices not returned in accordance with Merz’s instructions.

Additional Service Contract Terms and Conditions

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 Equipment provided with Ulthera Systems which are owned and operated in the United States; (3) the Ulthera System (including all Equipment) must be operated at all times in accordance with the 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 Equipment resulting from misuse, abuse, accident, or other use not strictly in accordance with the Specifications. The Ulthera 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 Equipment (or any other part of the Ulthera 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 Specifications. In addition, Customer must install all Ulthera System software updates and upgrades provided to Customer during the Service contract term; failure to do so may, at the sole discretion of Merz, void the Service Contract.

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 Ulthera 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 Ulthera products other than those purchased directly from Merz, or unauthorized sale/transfer of Ulthera 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 Ulthera products to Customer or refuse**

to service Ulthera Systems. Additionally, any use of Ulthera 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 ULTHERA 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 or 1-844-4MYMERZ).

	Item Number(s)	Serial Number(s)
Equipment Covered by Contract	UC-1 UH-2 Access key	
Effective dates	Start	End
Cost		Initials:
Method of payment	<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: