

Bioness Inc. One-Year Extended Service Contract

The following sets forth the terms of the One-Year Extended Service Contract (the “ES Contract”). No other terms apply.

ES CONTRACT COVERAGE & EXCLUSIONS:

If (1) a customer has purchased an ES Contract on a device, (2) such device is damaged or broken within the one year “Contract Term” (defined below), (3) the customer makes a claim for service under the ES Contract within the Contract Term and (4) the device is not an “Excluded Device” (defined below) and therefore not covered under the ES Contract, then and in such event the service of the device (i.e., replacing one or more damaged parts) or the replacement of the entire device (as determined by Bioness in its sole discretion) will be covered under the ES Contract for no additional fee. If Bioness determines to service or replace a device, it may in its sole discretion do so with new or refurbished parts or with a new or refurbished device. The ES Contract does not cover consumable items such, but not limited to, gel electrodes or cloth electrodes. The length of time required by Bioness in servicing or replacing a device will vary according to a number of factors, and there is no guaranteed lead-time. The “Contract Term” is defined as the one (1) period commencing on the date customer pays for the ES Contract. An “Excluded Device” is defined as any device that has been (1) altered or modified, (2) repaired by any person or entity other than Bioness, (3) used or stored in any manner contrary to or inconsistent with the use and storage instructions set forth in the Bioness User’s Guide (that accompanied the device and is also available at www.bioness.com), (4) subjected to an “Act of God” / accident of nature (rain or other water damage, etc) or neglect or (5) damaged in transit to or from Bioness.

HOW TO REQUEST SERVICE:

To request service under the ES Contract, a customer must call 800-211-9136 option 3 and report the problem to Bioness. Bioness will troubleshoot the problem over the telephone and make a determination to send a replacement part or replacement device. If a replacement part or replacement device is required, then Bioness will give the customer an RMA number that customer must include when the customer ships the damaged part or device to Bioness. If Bioness ships a replacement part or replacement device to a customer, the customer shall within fifteen (15) days following receipt of such replacement part or device from Bioness, return the damaged part or device to Bioness in the same box (i.e., in which Bioness shipped the replacement part or device to customer). If the customer fails to so return the damaged part or device to Bioness within such 15 day time period, (1) it shall be a material breach of the ES Contract, (2) Bioness can charge the customer for the replacement part or device and (3) if the customer fails to pay for such replacement part or device in full within ten (10) days following Bioness’ request for payment, Bioness shall also have the right to immediately terminate the ES Contract (without any refund due to the purchaser of the ES Contract).

FEES:

If Bioness determines (in its reasonable discretion) that such device is an Excluded Device, then and in such event (1) Bioness shall have no obligation to service or replace the device under the ES Contract and (2) Bioness shall estimate the charges necessary to replace the damaged parts and inform customer of such estimated charges (which estimate shall not be a cap on the actual charges that may be incurred). If customer authorizes such charges for replacement of the damaged parts of the Excluded Device

and makes arrangement for payment of such charges that is satisfactory to Bioness (in its sole discretion, including without limitation, prepayment of the estimated charges via credit card or by check), then Bioness will replace the damaged parts of the Excluded Device. If (1) customer does not authorize the charges of the Excluded Device, (2) authorizes the charges but does not make arrangement for payment satisfactory to Bioness (in its sole discretion) or (3) if Bioness determines that the Excluded Device must be replaced in total (i.e., replacing damaged parts is not deemed viable), then and in such event Bioness will ship the Excluded Device back to customer if so requested by customer. For any device that is serviced or replaced pursuant to the terms of this ES Contract, the customer will be responsible for any and all fees and costs related to refitting and having the device settings reinstalled to prescribed settings by a recommended provider.

SHIPPING TO AND FROM BIONESS:

Bioness will ship standard delivery but customer may elect to pay additional fees for expedited shipping services.

WARRANTY ON REPAIRED OR REPLACED DEVICES:

ANY REPLACED PART(S) OR DEVICE WILL REMAIN SUBJECT TO THE ES CONTRACT THROUGH EXPIRATION OF THE CONTRACT TERM. BUT (1) WILL HAVE NO WARRANTY AND (2) WILL HAVE NO COVERAGE WHATSOEVER BEYOND EXPIRATION OF THE CONTRACT TERM. THE ES CONTRACT IS NOT A WARRANTY. THE ES CONTRACT SHALL NOT AFFECT OR LENGTHEN ANY WARRANTY OTHERWISE IN EFFECT WITH RESPECT TO A PARTICULAR DEVICE.

PURCHASE AND RENEWAL:

Only the original device purchaser may purchase the ES Contract (and serial numbers will be used to verify original owner and purchase date). If an ES Contract is purchased while a device is still under its manufacturer warranty, the Contract Term will be prorated to reflect the remaining warranty period. Subject to such limitation and the following provisions, a second ES Contract may be purchased by the original device purchaser if it purchased prior to expiration of the first ES Contract. If it is so purchased, the second ES Contract commences on the expiration date of the first ES Contract, and has a one-year Contract Term. If the first ES Contract expires before a customer has purchased a second ES Contract, a customer cannot purchase a second ES Contract. (Also, for certainty, a customer cannot purchase a second ES Contract if they have not previously purchased the first ES Contract pursuant to the foregoing provisions.) Bioness may, in its sole discretion, offer to renew the ES Contract or allow the ES Contract customer to purchase a second ES Contract on a device. Bioness reserves the right, in its sole discretion, to (1) refuse to sell an ES Contract (whether a new/first ES Contract or a renewal/second ES Contract) to any customer for any reason whatsoever and (2) increase the price for an ES Contract at any time. Bioness has no obligation whatsoever to notify a customer regarding expiration of the Contract Term or options of purchasing a second ES Contract.

EXCLUSIONS, DISCLAIMERS AND LIMITATION OF LIABILITY:

DURING THE CONTRACT TERM, THIS IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND BIONESS' SOLE AND EXCLUSIVE LIABILITY UNDER THE ES CONTRACT WITH REGARD TO A DEFECTIVE, DAMAGED AND MALFUNCTIONING DEVICE COVERED BY THE ES

CONTRACT. BIONESS HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THE DEVICE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM OR OTHERWISE.

BIONESS IS NOT RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO ANY DEFECT, FAILURE, MALFUNCTION, USE OR MISUSE OF THE DEVICE, WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. SUBJECT TO THE TERMS OF THE ES CONTRACT, BIONESS' SOLE OBLIGATION IS TO REPAIR OR REPLACE A DEVICE PURSUANT AND SUBJECT TO THE PROVISIONS OF THE ES CONTRACT.

This ES Contract is between Bioness and the person or entity that purchased the ES Contract. The ES Contract is non-assignable, and any attempted assignment shall be void and of no force or effect (and shall result in the immediate termination of the ES Contract without any refund due to the purchaser of the ES Contract). AS TO ALL OTHERS, BIONESS MAKES NO AND HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THE DEVICE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM OR OTHERWISE. NO EXPRESS OR IMPLIED COVERAGE FOR THE PURCHASER OF THE ES CONTRACT SHALL EXTEND BEYOND THE CONTRACT TERM. THIS ES CONTRACT SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON OR ENTITY.

The disclaimers of representations and warranties and limitations of liability set forth herein form an essential basis of the bargain between the parties, were specifically bargained for, and Bioness has set its price for, and other terms and conditions applicable to, the ES Contract in reliance thereon. The parties expressly agree that such disclaimers and limitations shall apply in full force and effect even if all other remedies fail of their essential purpose.

GENERAL:

The exclusions and limitations set out above are not intended to, and should not be construed so as to contravene mandatory provisions of applicable law. If any part or term of this ES Contract is held to be illegal, unenforceable or in conflict with applicable law by a court of competent jurisdiction, the validity of the remaining portions of the ES Contract shall not be affected, and all rights and obligations shall be construed and enforced as if this ES Contract did not contain the particular part or term held to be invalid. This ES Contract gives the purchaser specific legal rights. The purchaser may also have other rights which vary from state to state or country to country.

This ES Contract shall be construed (both as to validity and performance) and enforced in accordance with the substantive laws of the State of California applicable to agreements made and to be performed wholly within such jurisdiction, notwithstanding any choice of law principles, statutes or rules to the contrary. To the maximum extent permitted by law the parties agree that: (1) all actions or proceedings arising in connection with this Agreement shall be heard only in the state and federal courts located in the City of Los Angeles, State of California (and such courts shall have in personam jurisdiction and venue over such party for the purpose of litigating any such dispute); (2) purchaser waives any right it may have to assert the doctrine of forum non

conveniens or otherwise object to venue; and (3) PURCHASER WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING UNDER OR RELATING TO THE ES CONTRACT.

This ES Contract (or any provision hereof) may be waived, amended or modified only by an instrument in writing signed by an officer of Bioness. Any rule of law or any legal decision that would require interpretation of any ambiguities in this ES Contract against the party that drafted it is of no application and is hereby expressly waived. The provisions of this ES Contract shall be severable in the event that any of the provisions hereof are held to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. This ES Contract constitutes the entire agreement and understanding and supersedes and replaces all previous agreements and understandings between the parties relative to the subject matter of this ES Contract. No one at Bioness has the authority to make any representation or promise not contained in this ES Contract, and purchaser has not purchased this ES Contract upon reliance on any such representation or promise not contained herein.