

## MASTER SURGICAL GUIDE AGREEMENT

THIS MASTER SURGICAL GUIDE AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, (“Effective Date”) by and between **ROE DENTAL LABORATORY, INC.**, an Ohio corporation of 9565 Midwest Avenue, Garfield Heights, Ohio 44125 (“Company”) and \_\_\_\_\_ of \_\_\_\_\_ (“Customer”).

### RECITALS

**WHEREAS**, the Company provides a surgical guide to its customers for a variety of dental and oral surgeries (“Surgical Guide”) and provides a surgical plan for the Surgical Guide (“Surgical Plan”);

**WHEREAS**, the Customer desires to engage the Company for the supply of Surgical Guides and Surgical Plans and the Company desires to provide the Customer Surgical Guides and Surgical Plans pursuant to the terms herein;

**NOW THEREFORE**, in consideration of the above recitals and the covenants and promises hereinafter set forth, Company and Customer agree as follows:

1.0 **SURGICAL GUIDE**. The Customer will provide the Company digitally imaged data or DICOM data (“Data”) for the patient. From this Data, the Company will prepare a preliminary virtual surgery for the Customer. The preliminary virtual surgery will be reviewed, modified and approved by the Customer. Upon the Customer’s approval and submission of the Work Authorization Form for each patient, a copy of the form is attached hereto as **Exhibit A** and incorporated herein by this reference, the Company will obtain or manufacture the requested Surgical Guide and/or the requested Surgical Plan. **It is the sole responsibility of the Customer to inspect and approve the Surgical Guide and Surgical Plan.**

2.0 **SCAN APPLICANCE**. The term “Scan Appliance” refers to the appliance that is placed in the patient’s mouth while the CT or MRI is taken. It is from this scan that the Data is produced. The Company recommends using its Scan Appliances to ensure accurate Data and Surgical Guides. **If a Scan Appliance manufactured by a third party is used, and/or models from which the Scan Appliance is made is not provided to the Company for fit verification of the Surgical Guides the Company is not responsible for inaccurate or defective Surgical Guides and/or Surgical Plans.**

3.0 **CUSTOMER REPRESENTATIONS**. If the Customer is the end user dentist, the Customer represents that he or she is a licensed dental professional qualified to (1) order the Data and review it for accuracy (2) review and approve the Surgical Plan and (3) to perform the dental procedures outlined in the Surgical Plan and/or to use the Surgical Guide. If the Customer is not the end user dentist, the Customer represents that (1) it is qualified to order the Data, Surgical Guide and Surgical Plan and review and approve them for accuracy and (2) that the end user dentist is a licensed dental professional qualified to review and approve the Surgical Guide and/or Surgical Plan and to perform the dental procedures outlined in the Surgical Plan and/or to use the Surgical Guide.

Customer represents that any Surgical Plan or Surgical Guide ordered or used was done so at the Customer’s sole request and specifications. The Customer agrees to take full medical responsibility for the design and the application of the Surgical Plan and Surgical Guide. Customer represents that it is solely responsible for inspecting and approving the Surgical Guide and Surgical Plan and any requested changes thereto.

4.0 **DISCLAIMER OF WARRANTIES**. **COMPANY HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE SURGICAL PLAN OR SURGICAL GUIDE, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF MATERIALS IN THE SURGICAL GUIDE OR WORKMANSHIP IN THE SURGICAL GUIDE, COMPANY’S TITLE TO THE SURGICAL PLAN OR SURGICAL GUIDE NOR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. Company shall not be liable to Customer for any loss, damage, or expense of any kind or nature caused, directly or indirectly, by the Surgical Plan or Surgical Guide or the use thereof or the failure or operation thereof.**

5.0 **DISCLAIMER AND LIMITATION OF LIABILITY**. **CUSTOMER AGREES AND UNDERSTANDS: THAT NEITHER COMPANY NOR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS OR EMPLOYEES (COLLECTIVELY, “REPRESENTATIVES”) IS AN INSURER; THAT CUSTOMER CURRENTLY HAS AND SHALL ALWAYS MAINTAIN INSURANCE COVERING THE CUSTOMER FOR USE OF THE SURGICAL GUIDE AND SURGICAL PLAN; THAT RECOVERY FOR ALL SUCH LOSS, DAMAGE AND EXPENSE SHALL BE LIMITED TO ANY SUCH INSURANCE COVERAGE ONLY; AND THAT COMPANY AND REPRESENTATIVES ARE RELEASED FROM ALL LIABILITY, INCLUDING CONSEQUENTIAL AND INCIDENTAL DAMAGES, DUE TO ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE, BREACH OF CONTRACT, EXPRESS OR IMPLIED,**

**BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR BY LOSS OR DAMAGE RESULTING FROM THE SURGICAL GUIDE AND/OR THE SURGICAL PLAN. THAT SHOULD THERE ARISE ANY LIABILITY ON THE PART OF COMPANY OR REPRESENTATIVE OF THE COMPANY FOR ANY LOSS, DAMAGE OR EXPENSE DUE TO ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE WHICH OCCURS BEFORE OR AFTER THE SIGNING OF THIS AGREEMENT, PRODUCT OR STRICT LIABILITY, BREACH OF WARRANTY, EXPRESS OR IMPLIED, BREACH OF CONTRACT, EXPRESS OR IMPLIED, OR FOR CONTRIBUTION OR INDEMNIFICATION, SUCH LIABILITY SHALL BE LIMITED TO THE MAXIMUM SUM OF TWO HUNDRED AND FIFTY DOLLARS (\$250.00) COLLECTIVELY FOR COMPANY AND REPRESENTATIVES, AND THIS SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY REGARDLESS OF WHAT LEGAL AUTHORITY IS USED TO DETERMINE THAT THE COMPANY WAS LIABLE FOR THE INJURY OR LOSS.**

**IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR THE LIMITATION OF LIABILITY, DISCLAIMER OR WARRANTIES OR EXCLUSION OF DAMAGES, IS ATTENDED BY THE PARTIES TO BE SEVERABLE FROM ANY OTHER PROVISION AND IS A SEVERABLE AND INDEPENDENT ELEMENT OF RISK ALLOCATION AND IS INTENDED TO BE ENFORCED AS SUCH.**

6.0 **USE OF SURGICAL GUIDE.** The Surgical Guide and Surgical Plan are to be used by qualified dental professionals only. Customer agrees to control the conformity of any delivered Surgical Guide before using it. Should the Customer omit to perform such control or decide to nevertheless use a non conformable Surgical Guide, the Customer frees the Company from any liability whatsoever. Customer shall not make any modification, alteration or addition to the Surgical Guide.

7.0 **INDEMNIFICATION.** IF ANYONE OTHER THAN THE CUSTOMER, INCLUDING THE CUSTOMER'S INSURANCE COMPANY, ASKS COMPANY OR REPRESENTATIVES TO PAY FOR ANY LOSS, DAMAGE OR EXPENSE (INCLUDING ECONOMIC LOSSES, PROPERTY DAMAGE, PERSONAL INJURY OR DEATH) DUE TO (I) BREACH OF CONTRACT OR WARRANTY, EXPRESS OR IMPLIED, (II) ACTIVE OR PASSIVE SOLE, JOINT OR SEVERAL NEGLIGENCE OF ANY KIND OR DEGREE BY COMPANY OR REPRESENTATIVES, (III) PRODUCT OR STRICT LIABILITY, OR (IV) A CLAIM FOR INDEMNIFICATION OR CONTRIBUTION, CUSTOMER AGREES TO PAY (WITHOUT ANY CONDITION THAT COMPANY OR REPRESENTATIVES FIRST PAY) FOR ALL LOSSES, DAMAGES AND EXPENSES INCLUDING, WITHOUT LIMITATION ATTORNEYS FEES, WHICH MAY BE ASSERTED AGAINST OR INCURRED BY COMPANY OR REPRESENTATIVES.

8.0 **ASSIGNABILITY OF AGREEMENT.** This Agreement is not assignable by Customer except upon the written consent of Company, which shall be in Company's sole and absolute discretion. This Agreement or any portion thereof is assignable by Company in its sole and absolute discretion.

9.0 **MISCELLANEOUS.** This Agreement supersedes all prior agreements between the parties with respect to the subject matter hereof and shall act as the agreement governing all Work Authorization Forms issued to the Company by the Customer. Headings are for convenience only and not part of this Agreement. Any failure by and of the parties to comply with any of the obligations, agreements, or conditions set forth in this Agreement may be waived by the other party, but any such waiver shall not be deemed a waiver of any subsequent failures or other obligations or conditions contained in this Agreement. The invalidity or unenforceability of any term or provision shall not affect the validity or enforceability of the remainder of this Agreement. This Agreement shall be construed and governed under the laws of Ohio. If a lawsuit is filed with respect to this Agreement, it shall be filed in the Court of Common Pleas for Cuyahoga County, Ohio. The prevailing party in any lawsuit shall be entitled to collect all reasonable attorney's fees and costs. The Agreement may not be altered, amended, or modified except by written instrument signed by all parties. This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the parties hereto and their respective successors, heirs, administrators, executors, and personal representatives.

**COMPANY: ROE DENTAL LABORATORY, INC.**

**CUSTOMER: \_\_\_\_\_**

\_\_\_\_\_  
By: \_\_\_\_\_, its \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_, its \_\_\_\_\_