

Purchasing

11520

**CONTRACT BETWEEN  
COUNTY OF GLOUCESTER  
AND  
STRYKER SALES CORPORATION**

**THIS CONTRACT** is made effective the 15<sup>TH</sup> day of April, 2020, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "**County**", and **STRYKER SALES CORPORATION**, with offices at 3800 East Centre Avenue, Portage, Michigan 49009, hereinafter referred to as "**Vendor**".

**RECITALS**

**WHEREAS**, the County of Gloucester has determined that there is a need to contract for the maintenance of Gloucester County EMS stretchers and stair chairs which includes preventative maintenance inspections, all parts, labor, travel, and unscheduled service and product equipment checklist; and

**WHEREAS**, this service related to this contract is an expansion and ultimately the support and maintenance of proprietary hardware and software which is integrally related to existing security systems previously installed in the County and is an exception to the Local Public Contracts Law and described and provided in N.J.S.A. 40A:11-5(1)(dd); and

**WHEREAS**, the contract has been awarded consistent with the fair and open provisions of the Gloucester County Administrative Code and with N.J.S.A. 19:44A-20.4 et seq., which exempt this contract from competition because vendor has certified that it has not previously made and will not make a disqualifying contribution during the term of the contract; and

**WHEREAS**, Vendor represents that it is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this Contract.

**NOW, THEREFORE**, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and Vendor do hereby agree as follows:

**TERMS OF AGREEMENT**

1. **TERM**. The contract shall be for the period of two years, from February 6, 2020 to February 5, 2022.
2. **COMPENSATION**. Vendor shall be compensated pursuant to Attachment A, attached hereto, in the total contract amount of \$56,660.00.

Vendor shall be paid in accordance with this Contract document upon date of an invoice

and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Vendor shall be considered a release in full of claims against the County arising out of, or by reason, the work done and materials furnished under this Contract.

**3. DUTIES OF PARTIES.** The specific duties of the Vendor shall be as set forth in Attachment A, *ProCare Services Agreement*, #200206083228, dated February 16, 2020, which is attached hereto and made a part of this Contract.

Vendor agrees that it has or will comply with, and where applicable shall continue throughout the period of this Contract to comply with, all of the requirements of the vendor's proposal.

**4. FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Vendor agrees as follows:

The Vendor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. The Vendor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Vendor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, sex, veteran status or military service.

The Vendor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Vendor's commitments under this chapter and shall post copies of the notice

in conspicuous places available to employees and applicants for employment.

The Vendor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Vendor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Vendor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Vendor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Vendor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. If Vendor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Vendor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

B. If, through any cause, the Vendor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Vendor under this Contract, shall be forthwith delivered to the County.

C. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

D. Notwithstanding the above, the Vendor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by

virtue of any breach of the Contract by the Vendor.

E. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

8. **INDEMNIFICATION.** The Vendor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, and shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all personal injury, including death, to employees or recipients of the Vendor's services or to any other persons, or from any damage to any property of third parties sustained in connection with this contract which results from any negligent acts or omissions of any of its officers, directors, employees, agents, servants or independent contractors. The Vendor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

9. **POLITICAL CONTRIBUTION DISCLOSURE AND PROHIBITION.** This contract has been awarded to Vendor based on the merits and abilities of Vendor to provide the goods or services described in this Contract. This contract was awarded through a non-competitive process pursuant to N.J.S.A. 19:44A-20.4 et seq. The signer of this Contract does hereby certify that Vendor, its subsidiaries, assigns or principals controlling in excess of 10% of the Vendor will not make a reportable contribution during the term of the contract to any political party committee in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County when the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

10. **INSURANCE.** Vendor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with carriers deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Vendor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County.

If Vendor is a member of a profession that is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Vendor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking

effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Vendor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that either party is prevented from performing this Contract by circumstances beyond its control, then any obligations owing such party to the other party shall be suspended without liability for the period during which the party is so prevented.

12. **NON-WAIVER.** The failure by either party to enforce any particular provision of this Contract, or to act upon a breach of this Contract, the other party shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

13. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

14. **CHANGES.** This Contract may be modified by change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

15. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

16. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

17. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Vendor is an independent contractor and is not an agent of the County.

18. **CONFIDENTIALITY.** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

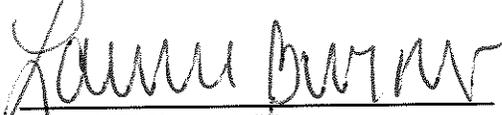
19. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

20. **CONTRACT PARTS.** This contract shall consist of this document, the specifications of the County and Vendor's *ProCare Services Agreement*, #200206083228, dated February 16, 2020, attached hereto as Attachment A. If there is a conflict between this Contract and the specification or the Vendor's response, then this Contract and the Specifications shall control.

**THIS CONTRACT** is effective as of the 15<sup>th</sup> day of April, 2020.

**IN WITNESS WHEREOF**, the County has caused this instrument to be signed by its Director, attested by its Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first part passed for that purpose, and Vendor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

**ATTEST:**

  
\_\_\_\_\_  
**LAURIE J. BURNS,**  
**CLERK OF THE BOARD**

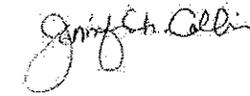
**COUNTY OF GLOUCESTER**

  
\_\_\_\_\_  
**ROBERT M. DAMMINGER, DIRECTOR**

**ATTEST:**

\_\_\_\_\_

**STRYKER SALES CORPORATION**



\_\_\_\_\_  
By: Jennifer N. Collins  
Title: Manager, Strategic Pricing & Contracts  
April 17, 2020

**ATTACHMENT A**

Stretchers

# ProCare Services



Sales Rep Name: Pat Julian  
ProCare Service Rep: John Lupton

3800 E. Centre Ave  
Portage, MI 49009

Date: 2/6/2020  
ID #: 200206083228

### PROCARE PROPOSAL SUBMITTED TO:

Account Number: 1885303  
Account Name: Gloucester County EMS  
Account Address:  
City, State Zip:

Name: Andy  
Title:  
Phone:  
Email:

### PROCARE COVERAGE

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs	Annual Price	Total
1	6086	Performance Pro	EMS Prevent NB	22	2	\$7,708.80	\$17,344.80
2	6082	Manual Cots	EMS Prevent NB	22	2	\$11,563.20	\$23,126.40
3	6252	Stair Chair	EMS Prevent NB	30	2	\$5,664.00	\$11,328.00
4	6392	Performance-LOAD	EMS Prevent NB	2	2	\$667.20	\$1,779.20
5	6506	Power Cots	EMS Prevent NB	2	2	\$1,540.80	\$3,081.60

### PROGRAM INCLUDES:

#### EMS Prevent NB:

- \*Includes parts, labor, travel
- \*Includes 1 annual PM inspection
- \*Includes unscheduled service and product equipment checklists.
- \*Replacement parts do not include mattresses, batteries, and other Disposable or expendable parts.

	ProCare Total	\$56,660.00
	<b>FINAL TOTAL</b>	<b>\$56,660.00</b>

Unless otherwise stated on contract, payment is expected upfront.

Start Date: 2/6/2020  
End Date: 2/5/2022

Stryker Signature \_\_\_\_\_ Date \_\_\_\_\_

  
**Robert M. Damming, Freeholder, Director**

20-02561

Purchase Order Number (MUST INCLUDE HARD COPY)

Check of Purchase Order is not required

### COMMENTS:

Please email signed Proposal and Purchase Order to [procarecoordinators@stryker.com](mailto:procarecoordinators@stryker.com).  
All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.  
\*\*Quote pricing valid for 30 days.

# ProCare Services



Sales Rep Name: Pat Julian  
 ProCare Service Rep: John Lupton

3000 H. Centre Ave  
 Portage, MI 49009

Date: 2/6/2020  
 ID #: 200206063228

### PRO-CARE PROPOSAL SUBMITTAL (PTO)

Account Number: 1885303  
 Account Name: Gloucester County EMS  
 Account Address:  
 City, State Zip

Name: Andy  
 Title:  
 Phone:  
 Email:

### PRO-CARE COVERAGE

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs	Annual Price	Total
1	6086	Performance Pro	EMS Prevent NB	22	2	\$7,708.00	\$17,344.00
2	6082	Manual Cots	EMS Prevent NB	22	2	\$11,563.20	\$23,126.40
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5	6506	Power Cots	EMS Prevent NB	2	2	\$1,540.80	\$3,081.60

### PROGRAM INCLUDES:

#### EMS Prevent NB:

- \*Includes parts, labor, travel
- \*Includes 1 annual PM (inspection)
- \*Includes unscheduled service and product equipment checklists.
- \*Replacement parts do not include mattresses, batteries, and other Disposable or expendable parts.

Unless otherwise stated on contract, payment is expected upfront.

ProCare Total	\$56,660.00
<b>FINAL TOTAL</b>	<b>\$56,660.00</b>

Start Date: 2/6/2020  
 End Date: 2/5/2022

*[Signature]*  
 \_\_\_\_\_  
 Stryker Signature Date

April 17, 2020

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

\_\_\_\_\_  
 Purchase Order Number (MUST INCLUDE HARD COPY)

Check of Purchase Order is not required

### COMMENTS:

Please email signed Proposal and Purchase Order to [procarecoordinators@stryker.com](mailto:procarecoordinators@stryker.com).  
 All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.  
 \*\*Quote pricing valid for 30 days.

**PAYMENT SCHEDULE**

Date	Payment	Int Paid	Prin. Remaining		Balance
Starting Balance				\$	56,660.00
2/1/2020	\$ 28,330.00	\$	20,330.00	\$	28,330.00
2/1/2021	\$ 28,330.00	\$		\$	

Item No.	Model	Serial Number	Program
1	6006	1908003800024	EMS Prevent NB
2	6006	1908003800025	EMS Prevent NB
3	6006	1908003800026	EMS Prevent NB
4	6006	1908003800027	EMS Prevent NB
5	6006	1900003800028	EMS Prevent NB
6	6006	1908003800029	EMS Prevent NB
7	6006	1908003800041	EMS Prevent NB
8	6006	1908003800042	EMS Prevent NB
9	6006	1908003800043	EMS Prevent NB
10	6006	1908003800044	EMS Prevent NB
11	6006	1908003800045	EMS Prevent NB
12	6006	1908003800046	EMS Prevent NB
13	6006	1908004000001	EMS Prevent NB
14	6002	060339855	EMS Prevent NB
15	6002	080440250	EMS Prevent NB
16	6002	080440261	EMS Prevent NB
17	6002	090239310	EMS Prevent NB
18	6002	110641121	EMS Prevent NB
19	6002	120539905	EMS Prevent NB
20	6002	120641456	EMS Prevent NB
21	6002	120641089	EMS Prevent NB
22	6002	130941296	EMS Prevent NB
23	6002	130941297	EMS Prevent NB
24	6002	130941290	EMS Prevent NB
25	6002	130941299	EMS Prevent NB
26	6002	140039577	EMS Prevent NB
27	6002	140039578	EMS Prevent NB
28	6002	140039579	EMS Prevent NB
29	6002	060439501	EMS Prevent NB
30	6002	120339054	EMS Prevent NB
31	6002	120339055	EMS Prevent NB
32	6002	120339056	EMS Prevent NB
33	6002	051039020	EMS Prevent NB
34	6002	010264456	EMS Prevent NB
35	6002	010839771	EMS Prevent NB
36	6006	171041741	EMS Prevent NB
37	6006	171041742	EMS Prevent NB
38	6006	171041743	EMS Prevent NB
39	6006	171041744	EMS Prevent NB
40	6006	171041745	EMS Prevent NB
41	6006	171041746	EMS Prevent NB
42	6006	171041747	EMS Prevent NB
43	6006	171041748	EMS Prevent NB
44	6006	171041749	EMS Prevent NB
45	6252	030239718	EMS Prevent NB
46	6252	030139768	EMS Prevent NB
47	6252	030739786	EMS Prevent NB
48	6252	040540489	EMS Prevent NB
49	6252	040639893	EMS Prevent NB
50	6252	030539459	EMS Prevent NB
51	6252	030939770	EMS Prevent NB
52	6252	031040415	EMS Prevent NB
53	6252	031139532	EMS Prevent NB
54	6252	031139539	EMS Prevent NB
55	6252	050140135	EMS Prevent NB
56	6252	050040458	EMS Prevent NB
57	6252	050040459	EMS Prevent NB
58	6252	050040460	EMS Prevent NB

59	6252	080340390	EMS Prevent NB
60	6252	080340391	EMS Prevent NB
61	6252	080940505	EMS Prevent NB
62	6252	080940506	EMS Prevent NB
63	6252	080940507	EMS Prevent NB
64	6252	080940508	EMS Prevent NB
65	6252	110639499	EMS Prevent NB
66	6252	120539987	EMS Prevent NB
67	6252	120541429	EMS Prevent NB
68	6252	120640273	EMS Prevent NB
69	6252	130839587	EMS Prevent NB
70	6252	130839588	EMS Prevent NB
71	6252	130839589	EMS Prevent NB
72	6252	130839590	EMS Prevent NB
73	6252	151139749	EMS Prevent NB
74	6252	05084060	EMS Prevent NB
75	6392	201900900367	EMS Prevent NB
76	6392	201900900368	EMS Prevent NB
77	6506	070640708	EMS Prevent NB
78	6506	070640709	EMS Prevent NB

## **SERVICE AGREEMENT**

This document sets forth the entire Product Service Plan Agreement ("Agreement") between Stryker Medical, (a division of Stryker Corporation), herein and after referred to as "Stryker", and Gloucester County EMS, herein and after, referred to as the "Customer". This is the entire Agreement and no other oral modifications are valid. This Agreement shall remain in effect unless canceled or modified by either party according to the following terms and conditions.

### **1. SERVICE COVERAGE AND TERM**

Stryker shall provide to Customer the services (the "Services") as defined on Page 1 of the Stryker Quote as the equipment ProCare Program (hereinafter each, a "Service Plan"). The equipment covered under said Service Plan is set forth on Exhibit A to the Quote (the "Equipment"). The Services and Service Plan are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its equipment and operations manuals, and accompanying labels and/or inserts for the Equipment. Customer covenants and agrees that its personnel will follow the instructions and contents of those manuals, labels and inserts. When Equipment or a component is replaced, the item provided in replacement will be the Customer's property (if Customer owns the Equipment) and the replaced item will be Stryker's property. The Service Plan coverage, term, start date, and price of the Services appear on the Service Plan.

### **2. EQUIPMENT SCHEDULE CHANGES**

During the term of the Agreement and upon each party's written consent, additional Equipment may be included in the Exhibit A. All additions are subject to the terms and conditions contained herein. Stryker shall adjust the charges and modify Exhibit A to reflect the additions.

### **3. INSPECTION SCHEDULING**

Service inspections will be scheduled in advance at a mutually agreed upon time for such period of time as is reasonably necessary to complete the Services. Equipment not made available at the specified time will be serviced at the next scheduled service inspection unless specific arrangements are made with Stryker. Such arrangements will include travel and other special charges at Stryker's then current rates.

### **4. INSPECTION ACTIVITY**

On each scheduled service inspection, Stryker's Service Representative will inspect each available item of Equipment as required in accordance with Stryker's then current Maintenance procedures for said Equipment. If there is any discrepancy or questions on the number of inspections, price, or Equipment, Stryker may amend this Agreement.

### **5. CUSTOMER OBLIGATIONS**

Customer shall use commercially reasonable efforts to cooperate with Stryker in connection with Stryker's performance of the Services. Customer understands and acknowledges that Stryker employees will not provide surgical or medical advice, will not practice surgery or medicine, will not come in physical contact with the patient, will not enter the "sterile field" at any time, and will not direct equipment or instruments that come in contact with the patient during surgery. Customer's personnel will refrain from requesting Stryker employees to take any actions in violation of these requirements or in violation of applicable laws, rules or regulations, Customer policies, or the patient's informed consent. A refusal by Stryker employees to engage in such activities shall not be a breach of this Agreement. Customer consents to the presence of Stryker employees in its operating rooms, where applicable, in order for Stryker to provide Services under this Agreement and represents that it will obtain all necessary consents from patients.

### **6. SERVICE INVOICING**

Invoices will be sent on the agreed payment method. All prices are exclusive of state and local use, sales or similar taxes. In states assessing upfront sales and use tax, Customer's payments will be adjusted to include all applicable sales and use tax amortized over the Service Plan term using a rate that preserves for Stryker, its affiliates and /or assigns, the intended economic yield for the transaction described in this Agreement. All invoices issued under this Agreement are to be paid within thirty (30) days of the date of the invoice. Failure to comply with Net 30 Day terms will constitute breach of contract and future Service will only be made on a prepaid or COD basis, or until the previous obligation is satisfied, or both. Stryker reserves the right, with no liability to Stryker, to cancel any contract on the basis of payment default for any previous equipment or service provided by Stryker or any of its affiliates.

### **7. PRICE CHANGES**

The Service prices specified herein are those in effect as of the date of acceptance of this Agreement and will continue in effect throughout the term of the Service Plan.

### **8. INITIAL INSPECTION**

This Agreement shall be applicable only to such Equipment as listed in Exhibit A, which has been determined by a Stryker's Representative to be in good operating condition upon his/her initial inspection thereof.

#### 9. OPERATION MAINTENANCE

Stryker's Services are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its Equipment and operations manuals, and accompanying labels and/or inserts for each item of Equipment. Customer's appropriate user personnel should be entirely familiar with the instructions and contents of those manuals, labels and inserts and implement them accordingly.

#### 10. SERVICE PLAN WARRANTY AND LIMITATIONS

Stryker represents and warrants that the Services shall be performed in a workmanlike manner and with professional diligence and skill. Services will comply with all applicable laws and regulations. During the term of the Service Plan, Stryker will maintain the Equipment in good working condition. Notwithstanding any other provision of this Agreement, the Service Plan does not include repairs or other services made necessary by or related to, the following: (1) abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker maintenance manual or operating instructions; (2) accidents; (3) catastrophe; (4) acts of god; (5) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel; (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (7) Equipment that has been repaired with any unauthorized or non-Stryker components. In addition, in order to ensure safe operation of the Equipment, only Stryker accessories should be used. Stryker reserves the right to invalidate the Service Plan if Equipment is used with accessories not manufactured by Stryker.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

#### 11. WAIVER EXCLUSIONS

No failure to exercise and no delay by Stryker in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of any breach of any provision by Stryker shall be deemed to be a waiver by Stryker of any preceding or succeeding breach of the same or any other provision. No extension of time by Stryker for performance of any obligations or other acts hereunder or under any other Agreement shall be deemed to be an extension of time for performances of any other obligations or any other acts by Stryker.

#### 12. LIMITATION OF LIABILITY

EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER SECTION 13, STRYKER'S LIABILITY ARISING UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. IN NO INSTANCE WILL STRYKER BE LIABLE TO CUSTOMER FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

#### 13. INDEMNIFICATION

Stryker shall indemnify and hold harmless Customer from any loss or damage brought by a third party which Customer may suffer directly as a result of the gross negligence or willful misconduct of Stryker or its employees or agents in the course of providing Services. The foregoing indemnification will not apply to any liability arising from: (i) an injury or damage due to the negligence of any person other than Stryker's employee or agent; (ii) the failure of any person other than Stryker's employee or agent to follow any instructions outlined in the labeling, manual, and/or instructions for use of the Equipment; (iii) the use of any equipment or part not purchased from Stryker or any equipment or any part thereof that has been modified, altered or repaired by any person other than Stryker's employee or agent; or (iv) any actions taken or omissions made by any Stryker employee while under the direction or control of Customer's staff. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i)-(iv) above resulting from Customer's or its employees' or agents' actions.

#### 14. TERM AND TERMINATION

The Agreement shall commence on the date indicated on the first Service Plan entered into between the parties and shall continue until Stryker ceases to provide Services or the Agreement is canceled by either party by giving a ninety (90) days prior written notice of any such cancellation to the other party. If this Agreement is canceled during or before the expiration date of the Agreement, Customer will owe for the months covered up to the cancellation date of the Agreement and for any parts, labor, and travel charges, required to maintain Equipment, exceeding that already paid during the Agreement. In the event Customer has pre-paid for the services hereunder, any unused amount as of the date of cancellation shall be returned to the Customer on a pro-rata basis.

#### 15. FORCE MAJEURE

Except for Customer's payment obligations, which may only be delayed and not excused entirely, neither party to this Agreement will be liable for any delay or failure of performance that is the result of any happening or event that could not reasonably have been avoided or that is otherwise beyond its control, provided that the party hindered or delayed immediately notifies the other party describing the circumstances causing delay. Such happenings or events will include, but not be limited to, terrorism, acts of war, riots, civil disorder, rebellions, fire, flood, earthquake, explosion, action of the elements, acts of God, inability to obtain or shortage of material, equipment or transportation, governmental orders, restrictions, priorities or rationing, accidents and strikes, lockouts or other labor trouble or shortage.

#### 16. INSURANCE REQUIREMENTS

Stryker shall maintain the following insurance coverage during the term of the Agreement: (i) commercial general liability coverage, including coverage for products and completed operations liability, with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate applying to bodily injury, personal injury, and property damage; (ii) automobile liability insurance with combined single limits of \$1,000,000.00 for owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance as required by applicable law. At Customer's written request, certificates of insurance shall be provided by Stryker prior to commencement of the Services at any premises owned or operated by Customer. To the extent permitted by applicable laws and regulations, Stryker shall be permitted to meet the above requirements through a program of self-insurance.

#### 17. WARRANTY OF NON-EXCLUSION

Each party represents and warrants that as of the Effective Date, neither it nor any of its employees, are or have been excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs. Each party further represents that no final adverse action by the federal or state government has occurred or is pending or threatened against the party, its affiliates, or, to its knowledge, against any employee, Stryker, or agent engaged to provide Services under this Agreement. Each party also represents that if during the term of this Agreement it, or any of its employees becomes so excluded, terminated, suspended, or debarred from a federal or state health care program or from participation in any federal or state procurement or non-procurement programs, such will promptly notify the other party. Each party retains the right to terminate or modify this Agreement in the event of the other party's exclusion from a federal or state health care program.

#### 18. COMPLIANCE

Stryker, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make all reports and disclosures required by law or contract, including without limitation properly reporting and appropriately reflecting actual prices paid for each item supplied hereunder net of any discount (including rebates and credits, if any) applicable to such item on Customer's Medicare cost reports, and as otherwise required under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)). Pricing under this Agreement (and each Service Plan) may constitute discounts on the purchase of Services. Customer represents that (i) it shall make all required cost reports, and (ii) it has the corporate power and authority to make or cause such cost reports to be made. To the extent required by law, Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1990 (P.L. 962499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing Services pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

#### 19. CONFIDENTIALITY

The parties hereto shall hold in confidence this Agreement and the terms and conditions contained herein (including Services Plan pricing) and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary or confidential information; and (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.

#### 20. HIPAA

Stryker is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160-164, as amended). To the extent the parties mutually agree that Stryker becomes a business associate of Customer, the parties agree to negotiate to amend the Service Plan or this Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the applicable Service Plan will immediately terminate. All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived incidentally during the course of this Agreement, shall be treated by both parties as confidential, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. Notwithstanding the foregoing, Stryker may be considered a "business associate" of Customers related to any Service Plan for wireless products and/or other designated business associate services, if Stryker is considered a "business associate" of Customer, Stryker will agree to enter into a business associate agreement with Customer as required by HIPAA.

#### 21. MISCELLANEOUS

Neither party may assign or transfer their rights and/or benefits under this Agreement without the prior written consent of the other party, except that Stryker shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by permitted successors and assigns of the parties to this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan. The invalidity, in whole or in part, of any of the foregoing paragraphs, when determined to be illegal, invalid, or unenforceable by a court or authority of competent jurisdiction, will not affect or impair the enforceability of the remainder of the Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations and agreements between the parties concerning the subject matter of this Agreement. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, or similar document, this Agreement will control. Any inconsistency or conflict between the terms of this Agreement and a Service Plan shall be resolved in favor of the Service Plan. The sections entitled Limitation of Liability, Indemnification, Compliance, Confidentiality and Miscellaneous of this Agreement shall survive its termination or expiration.

## **22. MAINTENANCE INSPECTION**

This service contract may include products which are beyond their warranty period and tested expected service life. Any such product will be inspected to determine if the product meets the operations and maintenance manual guidelines for that particular product as of the date of inspection. Despite any such inspection, Stryker makes no claims or assurances as to future performance, including no express or implied warranty, for any product which was inspected outside of its warranty period or beyond its tested expected service life.