

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND       §

**ADDENDUM TO SERVICE AGREEMENT BETWEEN  
STRYKER CORPORATION AND FORT BEND COUNTY**

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter “Customer”), a body corporate and politic under the laws of the State of Texas, and Stryker Sales Corporation, through its Medical Division (hereinafter “Stryker”), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Comprehensive Quotation dated 11/30/2018 with Invoice Terms and Conditions (hereinafter the “Agreement”), attached hereto as Exhibit “A” and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement and shall supersede any contrary language in Exhibit A:

1.     **Services.** Contractor shall provide the equipment identified in Exhibit A without delay.
2.     **Taxes.** Customer is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
3.     **Confidential Information.** Stryker expressly acknowledges that Customer is subject to the Texas Public Information Act, TEX. GOV’T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, Customer will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Customer by Stryker shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
4.     **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Customer’s sovereign immunity.
5.     **Limitations on Liability. Limitations on Liability.** The only limitation Customer will agree to is that in no instance will either party be liable to the other party for incidental, special or consequential damages.

- 6. **Attorney Fees.** County does not agree to pay any and/or all attorney fees or litigations expenses incurred by Contractor in any way associated with the Agreement.
- 7. **Ownership.** Upon payment of invoice, County shall own the equipment. Therefore, any restriction on resale to third parties is hereby deleted.
- 8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
  - A. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.
  - B. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

"County"  
FORT BEND COUNTY


By: \_\_\_\_\_  
KP George, County Judge

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

"Contractor"  
STRYKER SALES CORPORATION  
through its Medical Division

By:  \_\_\_\_\_

Name: Will Miller

Title: Regional Manager

Date: 01/12/19

Exhibit A: Comprehensive Quotation dated 11/30/2018

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

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Exhibit A:

Comprehensive Quotation  
dated 11/30/2018  
with Invoice Terms and Conditions



Sales Account Manager

Lauren Kuhner  
Lauren.Kuhner@stryker.com  
Cell: 281-217-9301

Remit to:

Stryker Medical  
P.O. Box 93308  
Chicago, IL 60673-3308

End User Shipping Address

1273335  
FORT BEND COUNTY EMS  
4332 HIGHWAY 36 S  
ROSENBERG, TX 77471

Shipping Address

1273335  
FORT BEND COUNTY EMS  
4332 HIGHWAY 36 S  
ROSENBERG, TX 77471

Billing Address

1243031  
COUNTY AUDITOR  
301 JACKSON  
RICHMOND, TX 77469

Customer Contact	Ref Number	Date	PO Number	Reference Field	Quote Type
	6999778	11/30/2018	QUOTE		

Line #	Quantity	Item Description	Part #	Unit Price	Extended Price	Item Comments
1.00	4	PowerLOAD	6390000000	\$22,375.96	\$89,503.84	
		Options				
	4	PowerLOAD	6390000000	\$22,375.96	\$89,503.84	
	4	English Manual	6390600000			
	4	1 year parts, labor & travel	7777881660			
	4	UNIVERSAL FLOORPLATE OPTION	6390028000			
	4	ONE PER ORDER, MANUAL, ENG OPT	639000220000			
	4	Standard Comp 6390 Power Load	6390026000			
2.00	4	6506 PWRLD COMPAT UPGRADE KIT	6506700001	\$1,453.80	\$5,815.20	
3.00	4	ProCare Upgrade Charge	77100003	\$310.00	\$1,240.00	

Note:

Product Total	\$96,559.04
Freight	\$0.00
Tax	\$0.00
<b>Total</b>	<b>\$96,559.04</b>

Signature: \_\_\_\_\_ Title/Position: \_\_\_\_\_ Date: \_\_\_\_\_

**Deal Consummation:** This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule.

**Confidentiality Notice:** Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency.

**Terms:** Net 30 Days. FOB origin. A copy of Stryker Medical's standard terms and conditions can be obtained by calling Stryker Medical's Customer Service at 1-800-STRYKER.

**Cancellation and Return Policy:** In the event of damaged or defective shipments, please notify Stryker within 30 days and we will remedy the situation. Cancellation of orders must be received 30 days prior to the agreed upon delivery date. If the order is cancelled within the 30 day window, a fee of 25% of the total purchase order price and return shipping charges will apply.

## Invoice Terms and Conditions

1. **General.** "Seller" means Stryker Corporation, a Michigan corporation, and/or any division or subsidiary identified on the front of this invoice. "Buyer" means the person, firm or corporation executing an order for goods supplied by Seller (hereinafter "Products"). Seller shall be bound by all terms and conditions of this invoice upon the occurrence of any of the following: (a) an order or acceptance is received from Buyer in response to Seller's quotation, or (b) written acceptance of Buyer's order is delivered to Buyer by Seller, or (c) Seller shall not have tendered refusal of such order to Buyer within thirty (30) days after receipt by Seller of such order. These Terms and Conditions are in lieu of and replace any and all terms and conditions set forth in any documents issued by Buyer. Any additional, different, or conflicting terms and conditions on any such document issued by Buyer at any time are hereby rejected by Seller and shall not be binding in any way on Seller.

### 2. Price.

(a) Unless otherwise indicated, prices do not include, and Buyer is responsible for and agrees to pay (unless Buyer shall provide Seller at the time an order is submitted with an exemption certificate or other documents acceptable to taxing or custom authorities), all sales, use, value added, excise and all other federal, state or local or foreign taxes, import or customs fees and duties associated with an order, however designated, except for Seller's franchise taxes and taxes on Seller's net income. If applicable, a separate charge for taxes will be shown on Seller's invoice.

(b) The price shown on this invoice is net of discounts provided at the time of purchase. Some of the Products listed on this invoice may be subject to rebates or discounts, for which separate documentation is provided by Seller. Buyer must (i) claim the value of all rebates or discounts in the buyer fiscal year earned or the immediately following fiscal year, (ii) properly report and appropriately reflect discounts and rebates in Medicare/Medicaid cost reports and all claims for payment filed with third-party payors as required by law or contract, and (iii) provide agents of the United States or a state agency with access to all information from Seller concerning discounts and rebates upon request.

3. **Payment Terms.** Unless otherwise indicated, this invoice shall be paid in full by Buyer net thirty (30) days. Any amount not paid on time may be subject to a late fee of 1½% per month prorated (18% per annum), or the maximum interest rate allowable by law whichever is the highest. Additionally, Buyer may be subject to a fee of Fifty Dollars (\$50.00) USD for any checks returned unpaid to Seller for any reason. In the event an attorney is employed or expense is incurred to compel payment of the invoice or to declare any action or proceeding is commenced, Buyer agrees to pay all costs and expenses associated with collection of unpaid sums, including but not limited to attorney's fees. Seller, in its sole discretion, reserves the right to change terms of payment and/or discontinue further shipments, without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Buyer's credit standing is received by Seller.

4. **Delivery and Title.** Unless otherwise provided on the face of this invoice, delivery terms are FOB Seller's plant. Delivery shall be deemed to have been made when Buyer's shipment has been delivered to a carrier, specified by Buyer on purchase order or equivalent. In the event that Buyer does not specify the carrier, the carrier may be at Seller's option. Title of the Products sold hereunder shall pass to Buyer upon delivery by Seller. However, Buyer hereby agrees that Seller shall retain a purchase money security interest in the Products, and to any proceeds from the disposition of such Products, until the purchase price and other charges due Seller shall have been paid in full. Upon any default by Buyer hereunder, Seller shall have any and all rights and remedies of secured party under the Uniformed Commercial Code which right shall be cumulative.

5. **Inspection and Acceptance.** Upon receipt of the Products, Buyer agrees to inspect and/or test the Products. The Products shall be deemed accepted by Buyer unless Buyer provides Seller a timely written notice specifically noting any defects or discrepancies in the quality or quantity of the Products received. All notices regarding nonconforming Products, shortages, rejection or revocation of acceptance must be made in writing and received by Seller no later than thirty (30) days from the date of Seller's invoice, which Buyer agrees is a reasonable time frame within which to diligently inspect and provide notice to Seller. Buyer waives any right to reject the shipment or revoke acceptance thereafter.

### 6. Warranties, Indemnity and Limitations of Liability.

(a) Unless otherwise provided in Seller's Price Catalog, the Products are warranted free from manufacturing and material defects for a period of one year after delivery of same. Any Products that become defective during this period shall be repaired or replaced either at Seller's plant or Buyer's location, such determination being at Seller's sole discretion. All warranties hereunder are made subject to the proper use by Buyer in the application for which such products were intended. The warranty provided hereunder does not cover any Products (i) that have been misused, modified, refurbished or repaired without the prior consent of Seller, (ii) that have been subjected to unusual stress or have not been properly maintained or (iii) on which any original serial numbers or other identification marks have been removed or destroyed. In any event, Seller's liability shall be limited to the replacement value of any damaged or defective part. THE EXPRESS WARRANTY SET FORTH IN THIS SECTION 6 IS

THE ONLY WARRANTY APPLICABLE TO THE PRODUCTS SOLD SUBJECT TO THESE TERMS AND CONDITIONS AND IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY SELLER, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) Stryker will hold Buyer harmless from and will indemnify Buyer for any and all liability incurred resulting directly from a defect in workmanship or design of the product. This indemnification applies only if the instructions outlined in the labeling, manual, and/or instructions for use are followed. This indemnification will not apply to any liability arising from: (a) an injury due to the negligence of any person other than an employee or agent of Stryker; (b) the failure of any person other than an employee or agent of Stryker to follow any instructions for use of the product; or (c) the use of any product not purchased from Stryker or product that has been modified, altered or repaired by any person other than an employee or agent of Stryker. Buyer will hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (a), (b), or (c) arising from the acts of the negligent acts or omissions of Buyer or its officers, employees or agents.

(c) In no event will Stryker's liability arising in connection with or under this invoice (whether under the theories of breach of contract, tort, misrepresentation, fraud, warranty, negligence, strict liability or any other theory of law) exceed the purchase price, current market value or residual value of the Products whichever is less. BUYER WILL IN NO EVENT BE ENTITLED TO, AND STRYKER WILL NOT BE LIABLE FOR, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE.

7. **Force Majeure.** 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.

8. **Default and Cancellation.** In the event of Buyer's default in payment for the Products purchased hereunder upon the terms and conditions agreed upon with Seller, Buyer shall be responsible for all reasonable costs and expenses (including reasonable attorney's fees) incurred by Seller in collection of any sums owing by Buyer, and Seller shall not be obligated to make any further deliveries to Buyer. Should Buyer elect to cancel its order, in whole or in part, Buyer shall be liable to Seller for reasonable cancellation charges that shall include but not be limited to all costs and expenses incurred by Seller in connection with procuring and filling Buyer's purchase order.

9. **Returns.** Products returned by Buyer for credit, replacement and/or repair shall be in accordance with the return policy of Seller, a copy of which may be obtained upon written request to Seller.

10. **Compliance With Law; Not For Resale or Export.** Buyer agrees to comply with all applicable laws and regulations of the various states and of the United States in the use of the Products. Buyer agrees and represents that it is buying for its own internal use only, and not for resale or export.

11. **General.** Except as provided below, neither Party may assign this Agreement without the prior written consent of the other Party, except that Stryker will 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 will be binding upon, will inure to the benefit of, and be enforceable by successors and assigns of the Parties to this Agreement. This Agreement will not confer any right or remedy upon any person other than the Parties hereto and their respective successors and permitted assigns. This Agreement and document referred herein constitutes the entire agreement between the Parties with respect to this subject matter, and any modification or amendments to this Agreement must be in writing and signed by both Parties. If any provision of this Agreement is deemed illegal, invalid or unenforceable the Parties will endeavor to replace it by another provision that will as closely as possible reflect their original intention. No right or remedy conferred in this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy given now or existing in law or in equity or by statute. The validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. IN NO EVENT WILL EITHER PARTY BE LIABLE (WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS). This Agreement will be governed by and construed in accordance with the laws of the State of Michigan as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles.

Date: January, 2018

Re: Stryker Combined Sole Source

To Whom It May Concern:

Stryker Medical certifies that we are the sole manufacturer of the Stryker EMS Power-LOAD (Model 6390). Below are the unique characteristics of the Power-LOAD Cot Fastener. These characteristics can be broken down into two primary categories: Independent Qualification, and Ease of Use. The Stryker EMS Power-LOAD (Model 6390) cot fastening system is mounted within the patient compartment and is intended to aid in the loading/unloading of patients.

#### Independent Qualification

- IPX6: The system is rated to withstand powerful water jets.
- IEC 60601-1 and IEC 60601-1-2: This certification indicates that Power-LOAD conforms to industry standards for mechanical and electrical safety for medical electrical devices, as well as electromagnetic compatibility and immunity.
- BS EN-1789 clause 4.5.9: This is a European dynamic crash test which subjects a 50<sup>th</sup> percentile dummy to a nominal 10g deceleration for a minimum of 50ms. Following the test there shall be no sharp edges or danger to the safety of persons in the road ambulance.

#### Ease of Use

- Device must provide a linear guide when loading and unloading the cot
- Device must allow for remote actuation from Power-PRO foot end controls
- Device must engage to the cot during loading and unloading, providing a means of lifting and lowering
- Device must allow for manual back-up operation in the event of power failure or system error
- Device must have a safe working load of 870 lbs and be capable of lifting patients weighing up to 700lbs.
- Device must be mounted inside the patient compartment to prevent environmental exposure and corrosion
- Device must be power washable
- Device must be capable of inductively charging the Stryker SMRT cot battery

Stryker Medical certifies that we are the sole manufacturer of the Stryker EMS Power-PRO XT (Model 6506). Below are the unique characteristics of the Power-PRO XT Ambulance Cot.

These characteristics can be broken down into two primary categories: Independent Qualification, and Ease of Use and Maintenance.

#### Independent Qualification

- IPX6: The system is rated to withstand powerful water jets.
- IEC 60601-1 and IEC 60601-1-2: This certification indicates that Power-PRO conforms to industry standards for mechanical and electrical safety for medical electrical devices, as well as electromagnetic compatibility and immunity.
- BS EN-1789 clause 4.5.9: This is a European dynamic crash test which subjects a 50<sup>th</sup> percentile dummy to a nominal 10g deceleration for a minimum of 50ms. Following the test there shall be no sharp edges or danger to the safety of persons in the road ambulance. <sup>1</sup>

#### Ease of Use and Maintenance

- The cot has a weight capacity of 700lbs.
- The battery is placed at the foot end of the stretcher
- The cot legs power-retract in 2.4 seconds which speeds load times.
- The cot provides the highest possible load height of any cot on the market at 36" and is operator-adjustable to match the deck height of individual ambulances.
- The foot end of the cot provides lifting bars and operator controls at two different heights, thus providing optimum ergonomics to most operator heights.
- The foot end of the cot contains a large battery indicator light which displays amber or green which indicates battery level. A warning is given by a flashing amber light, providing the operator the time to change the battery before full depletion of power.
- The cot has 6" x 2" sealed bearing casters – the largest in the industry
- The cot features a foot-end-mounted hourly usage meter. This is an easy tool to determine the timing of preventative maintenance checks.
- The cot features powder-coating of the entire aluminum frame (including the patient handling surfaces), thus eliminating aluminum oxidation throughout the cot.
- All caster bearings are sealed, eliminating lubrication.
- The cot is power-washable.
- The cot has an optional knee-gatch which provides patient comfort
- The cot has a retractable head section which provides 360 degree mobility in any height position.

Stryker Medical also certifies that we are the sole manufacturer of Stryker OEM Service Parts.

Stryker Medical certifies that we are the sole manufacturer of the Stryker EMS Stair-PRO (6252) product. This correspondence is to inform you of the unique characteristics of the Stair-PRO (6252) system.

Standard Features:

- High visibility powder-coated yellow frame
- Color-coded controls
- Extendable foot end lift handles
- Locking rear lift handles
- Molded hand grips
- Lightweight, rugged aluminum construction
- Oversized rear wheels with sealed bearings
- Dual wheel locks
- Compact storage size
- Positive action locking mechanism
- Power washable
- Grease-free maintenance

Ease of Use:

- Innovative Stair-TREAD system
- Extendable upper control handle
- 4-inch (10cm) front caster wheels

Patented Exclusivity:

- Patent Number: 6648343
- Patent Abstract: The present invention is directed to a stair chair. The stair chair includes a seat assembly mounted to a main frame and configured to pivot about a first pivot axis. A rail assembly having two laterally spaced brackets provided at a lower end of the rail assembly is included. A back wheel is rotatably supported on each bracket for rotation about a common axis of rotation. At least two mounts are provided at a lower end of the main frame, each of which is configured to pivotally connect one of the brackets to the main frame for movement about a second pivot axis. The rail assembly and seat assembly are configured to pivot about their respective pivot axes independent of movement of one another.

Please contact your Stryker Sales Representative for further information.

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<sup>1</sup> Only conforms when used with the Power-LOAD<sup>®</sup> cot fastener (model 6390).