

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**ADDENDUM TO PROCARE PROPOSAL AND 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 PROCARE PROPOSAL AND SERVICE AGREEMENT (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 services identified in Exhibit A without delay.
2. **Term.** Services shall be provided effective 08/01/2019 and shall expire 07/31/2020. Services do not automatically renew.
3. **Maximum Compensation.** Contractor’s fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is \$50,606.00. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
4. **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.
5. **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.

6. **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.
7. **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.
8. **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.
9. **Ownership.** Upon payment of invoice, County shall own the equipment. Therefore, any restriction on resale to third parties is hereby deleted.
10. **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: Angela Hall

Name: Angela Hall

Title: Senior Contracts Coordinator

Date: 5/24/19

Exhibit A: PROCARE PROPOSAL AND SERVICE AGREEMENT DATED 4/24/2019

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ 50,000.<sup>00</sup> are available to pay the obligation of Fort Bend County within the foregoing Agreement.



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

MTR: i:\agreements\2019 agreements\purchasing\stryker\stryker.medical.ems.addendum.5.6.19.docx

EXHIBIT A:  
PROCARE PROPOSAL AND  
SERVICE AGREEMENT  
DATED 4/24/2019

Sales Rep Name: Tim Garza  
ProCare Service Rep: Jason Evans

Date: 4/24/2019  
ID #: 190424074445

**PROCARE PROPOSAL SUBMITTED TO:**

Account Number: 1273335  
Account Name: Fort Bend County EMS  
Account Address: 4332 Highway 36 S  
City, State Zip: Rosenberg, TX 77471

Name: Rita Graeber  
Title: Deputy Chief  
Phone:  
Email: rita.graeber@fortbendcountytexas.gov

**PROCARE COVERAGE**

Item No.	Model Number	Model Description	Serial Number	ProCare Program	Qty	Yrs	Total
1	6252	Stair Chair	170241783	EMS Prevent NB	1	1	\$196.00
2	6252	Stair Chair	170241784	EMS Prevent NB	1	1	\$196.00
3	6252	Stair Chair	170241785	EMS Prevent NB	1	1	\$196.00
4	6252	Stair Chair	170241786	EMS Prevent NB	1	1	\$196.00
5	6252	Stair Chair	170241787	EMS Prevent NB	1	1	\$196.00
6	6252	Stair Chair	170241788	EMS Prevent NB	1	1	\$196.00
7	6252	Stair Chair	170241789	EMS Prevent NB	1	1	\$196.00
8	6252	Stair Chair	180239911	EMS Prevent NB	1	1	\$196.00
9	6252	Stair Chair	180239912	EMS Prevent NB	1	1	\$196.00
10	6252	Stair Chair	180239913	EMS Prevent NB	1	1	\$196.00
11	6252	Stair Chair	180239914	EMS Prevent NB	1	1	\$196.00
12	6252	Stair Chair	180239915	EMS Prevent NB	1	1	\$196.00
13	6252	Stair Chair	180239916	EMS Prevent NB	1	1	\$196.00
14	6252	Stair Chair	180239917	EMS Prevent NB	1	1	\$196.00
15	6252	Stair Chair	180239918	EMS Prevent NB	1	1	\$196.00
16	6252	Stair Chair	180239919	EMS Prevent NB	1	1	\$196.00
17	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
18	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
19	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
20	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
21	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
22	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
23	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
24	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
25	6252	Stair Chair	2019TBD	EMS Prevent NB	1	3 mnths	\$49.00
26	6083	Manual Cot	100439756	EMS Prevent NB	1	1	\$408.00
27	6506	Power Cots	100539726	EMS Prevent	1	1	\$1,318.00
28	6506	Power Cots	100539727	EMS Prevent	1	1	\$1,318.00
29	6506	Power Cots	100539728	EMS Prevent	1	1	\$1,318.00
30	6506	Power Cots	100539729	EMS Prevent	1	1	\$1,318.00
31	6506	Power Cots	100539730	EMS Prevent	1	1	\$1,318.00
32	6506	Power Cots	100539731	EMS Prevent	1	1	\$1,318.00
33	6506	Power Cots	100539732	EMS Prevent	1	1	\$1,318.00
34	6506	Power Cots	100539733	EMS Prevent	1	1	\$1,318.00
35	6506	Power Cots	100539734	EMS Prevent	1	1	\$1,318.00
36	6506	Power Cots	100539735	EMS Prevent	1	1	\$1,318.00
37	6506	Power Cots	100539736	EMS Prevent	1	1	\$1,318.00
38	6506	Power Cots	110840470	EMS Prevent	1	1	\$1,318.00
39	6506	Power Cots	120339036	EMS Prevent	1	1	\$1,318.00
40	6506	Power Cots	140941271	EMS Prevent	1	1	\$1,318.00
41	6506	Power Cots	150139290	EMS Prevent	1	1	\$1,318.00
42	6506	Power Cots	150139291	EMS Prevent	1	1	\$1,318.00
43	6506	Power Cots	160139763	EMS Prevent	1	1	\$1,318.00
44	6506	Power Cots	160139762	EMS Prevent	1	1	\$1,318.00
45	6506	Power Cots	160139764	EMS Prevent	1	1	\$1,318.00
46	6506	Power Cots	170241400	EMS Prevent	1	1	\$1,318.00

47	6506	Power Cots	170241499	EMS Prevent	1	1		\$1,318.00
48	6506	Power Cots	170241500	EMS Prevent	1	1		\$1,318.00
49	6506	Power Cots	170241501	EMS Prevent	1	1		\$1,318.00
50	6506	Power Cots	180139895	EMS Prevent	1	1		\$1,318.00
51	6506	Power Cots	180139896	EMS Prevent	1	1		\$1,318.00
52	6506	Power Cots	180139897	EMS Prevent	1	1		\$1,318.00
53	6506	Power Cots	180139898	EMS Prevent	1	1		\$1,318.00
54	6506	Power Cots	180139899	EMS Prevent	1	1		\$1,318.00
55	6390	Power-LOAD	170140795	EMS Prevent	1	1		\$1,731.00
56	6392	Performance-LOAD	2017000800060	EMS Prevent NB	1	1		\$695.00
57	6392	Performance-LOAD	2017000800061	EMS Prevent NB	1	1		\$695.00
58	6392	Performance-LOAD	2017000800062	EMS Prevent NB	1	1		\$695.00
59	6392	Performance-LOAD	2017000800063	EMS Prevent NB	1	1		\$695.00
60	6392	Performance-LOAD	2018000800006	EMS Prevent NB	1	1		\$695.00
61	6392	Performance-LOAD	2018000800007	EMS Prevent NB	1	1		\$695.00
62	6392	Performance-LOAD	2018000800008	EMS Prevent NB	1	1		\$695.00
63	6392	Performance-LOAD	2018000800009	EMS Prevent NB	1	1		\$695.00
64	6392	Performance-LOAD	2018000800010	EMS Prevent NB	1	1		\$695.00
65	6390	Power-LOAD	2019TBD	EMS Prevent	1	1		\$432.75
66	6390	Power-LOAD	2019TBD	EMS Prevent	1	1		\$432.75
67	6390	Power-LOAD	2019TBD	EMS Prevent	1	1		\$432.75
68	6390	Power-LOAD	2019TBD	EMS Prevent	1	1		\$432.75

**PROGRAM INCLUDES:**

**EMS Prevent NB:**

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

	<b>ProCare Total</b>	<b>\$50,606.00</b>
	<b>FINAL TOTAL</b>	<b>\$50,606.00</b>

Start Date: 8/1/2019  
End Date: 7/31/2020

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

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

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

**COMMENTS:**

Please fax signed Proposal and Purchase Order to Tom Tackabury at 269-321-3501.  
All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.  
\*\*Quote pricing valid for 30 days.

**SERIAL NUMBER SHEET**

Item No.	Model	Serial Number	Program
1	6252	170241783	EMS Prevent NB
2	6252	170241784	EMS Prevent NB
3	6252	170241785	EMS Prevent NB
4	6252	170241786	EMS Prevent NB
5	6252	170241787	EMS Prevent NB
6	6252	170241788	EMS Prevent NB
7	6252	170241789	EMS Prevent NB
8	6252	180239911	EMS Prevent NB
9	6252	180239912	EMS Prevent NB
10	6252	180239913	EMS Prevent NB
11	6252	180239914	EMS Prevent NB
12	6252	180239915	EMS Prevent NB
13	6252	180239916	EMS Prevent NB
14	6252	180239917	EMS Prevent NB
15	6252	180239918	EMS Prevent NB
16	6252	180239919	EMS Prevent NB
17	6252	2019TBD	EMS Prevent NB
18	6252	2019TBD	EMS Prevent NB
19	6252	2019TBD	EMS Prevent NB
20	6252	2019TBD	EMS Prevent NB
21	6252	2019TBD	EMS Prevent NB
22	6252	2019TBD	EMS Prevent NB
23	6252	2019TBD	EMS Prevent NB
24	6252	2019TBD	EMS Prevent NB
25	6252	2019TBD	EMS Prevent NB
26	6083	100439756	EMS Prevent NB
27	6506	100539726	EMS Prevent
28	6506	100539727	EMS Prevent
29	6506	100539728	EMS Prevent
30	6506	100539729	EMS Prevent
31	6506	100539730	EMS Prevent
32	6506	100539731	EMS Prevent
33	6506	100539732	EMS Prevent
34	6506	100539733	EMS Prevent
35	6506	100539734	EMS Prevent
36	6506	100539735	EMS Prevent
37	6506	100539736	EMS Prevent
38	6506	110840470	EMS Prevent
39	6506	120339036	EMS Prevent
40	6506	140941271	EMS Prevent
41	6506	150139290	EMS Prevent
42	6506	150139291	EMS Prevent
43	6506	160139762	EMS Prevent
44	6506	160139763	EMS Prevent
45	6506	160139764	EMS Prevent
46	6506	170241400	EMS Prevent
47	6506	170241499	EMS Prevent
48	6506	170241500	EMS Prevent
49	6506	170241501	EMS Prevent
50	6506	180139895	EMS Prevent
51	6506	180139896	EMS Prevent
52	6506	180139897	EMS Prevent
53	6506	180139898	EMS Prevent
54	6506	180139899	EMS Prevent
55	6390	170140795	EMS Prevent

56	6392	2017000800060	EMS Prevent NB
57	6392	2017000800061	EMS Prevent NB
58	6392	2017000800062	EMS Prevent NB
59	6392	2017000800063	EMS Prevent NB
60	6392	2018000800006	EMS Prevent NB
61	6392	2018000800007	EMS Prevent NB
62	6392	2018000800008	EMS Prevent NB
63	6392	2018000800009	EMS Prevent NB
64	6392	2018000800010	EMS Prevent NB
65	6390	2019TBD	EMS Prevent
66	6390	2019TBD	EMS Prevent
67	6390	2019TBD	EMS Prevent
68	6390	2019TBD	EMS Prevent

## 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 Fort Bend 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 1980 (P.L. 96Z499) 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, where 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.



## ProCare® Services

3800 E. Centre Ave.  
Portage, MI 49002 USA  
1-800-STRYKER  
stryker.com

<b>To:</b>	Whom it may concern
<b>Subject:</b>	Emergency Care Parts and Service
<b>Date:</b>	January 31, 2019

Stryker's Medical division certifies that it is the original equipment manufacturer (OEM) or sole source distributor of parts for Stryker's Emergency Care products. All parts are manufactured at Stryker or by an outside supplier specifically for Stryker.

Stryker employs its own field service team (known as ProCare Services) to service its products. Stryker only uses OEM parts for repairs, and has exclusive use of certain proprietary tools for diagnostics and repairs. Stryker Emergency Care products that require the use of such proprietary tools include, but are not limited to:

- Power-LOAD fastener
- Power-PRO cot
- LUCAS 3 chest compression system
- LIFEPAK 15 defibrillator/monitor
- LIFEPAK 20e defibrillator/monitor
- LIFEPAK 1000 defibrillator
- LIFEPAK CR+ / LIFEPAK CR2 defibrillator

All tooling is calibrated, documented and controlled by Stryker's home offices in Portage, MI, USA and Redmond, WA, USA. Calibration records and training records are available upon request.

All service repairs are documented and reviewed by Stryker's quality team. To help ensure Stryker's commitment to quality, Stryker tracks and trends its service to help ensure the highest level of product performance for its customers. Preventive maintenance (PM) and service history documentation is available upon request.

Please contact your local Stryker representative with questions.

Stryker Corporation or its divisions or other corporate affiliated entities own, use or have applied for the following trademarks or service marks: LIFEPAK, LUCAS, Power-LOAD, Power-PRO, ProCare, Stryker. All other trademarks are trademarks of their respective owners or holder.