

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, LLC, a Michigan Limited Liability Company, through its Medical Division, (hereinafter “Stryker”), a company authorized to conduct business in the State of Texas.

RECITALS

THAT, WHEREAS, the parties have executed and accepted that certain PROCARE PROPOSAL AND SERVICE PLAN AGREEMENT (hereinafter the “Agreement”), subject to the changes herein, attached hereto as Exhibit “A” (Proposal ID #230510092641) and incorporated by reference;

WHEREAS, Stryker represents that it is qualified and desires to perform such services;

WHEREAS, Stryker is the sole source provider of the Services, and indicated by the letter attached as Exhibit B, and incorporated fully by reference;

WHEREAS, the Texas County Purchasing Act, § 262.024(a)(7) of the Texas Local Government Code, exempts from competitive bidding contracts items that can be obtained from only one source;

WHEREAS, the following changes are incorporated as if a part of the Agreement;

WHEREAS, the purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in Exhibit A; and

WHEREAS, By execution of this Addendum, the Parties expressly agree that this Addendum is a material change from the attached Exhibit and is approved and accepted by the parties regardless of any language to the contrary.

AGREEMENT

1. **Scope of Services.** Contractor shall provide the equipment services without delay as described in the ProCare Services Proposal (Proposal ID #230510092641), attached as Exhibit A, and incorporated by reference.
2. **Term.** Services shall be provided effective 08/01/2023 and shall terminate no later than 07/31/2024. This Agreement shall not automatically renew, but may be renewed by written agreement of the parties.

3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County 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. Interest resulting from late payments by County shall be governed by Chapter 2251, Texas Government Code.
4. **Limit of Appropriation.** Stryker's fees shall be calculated at the rates set forth in the attached Exhibit A. Stryker clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of ninety-nine thousand, four hundred eighty-four and 00/100 dollars (\$99,484.00), specifically allocated to fully discharge any and all liabilities County may incur. Stryker does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Stryker may become entitled to and the total maximum sum that County may become liable to pay to Stryker shall not under any conditions, circumstances, or interpretations thereof exceed ninety-nine thousand, four hundred eighty-four and 00/100 dollars (\$99,484.00). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
5. **Sole Source.** Stryker is the sole manufacturer of Stryker's Power-LOAD Cot Fastener as described in letter attached as Exhibit B.
6. **Public Information Act.** 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.
7. **Indemnity.** The Parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Stryker for any reason are hereby deleted.

8. **Applicable Law; Arbitration; Attorney Fees.** 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 County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Stryker in any way associated with the Agreement.
9. **Limitation on Liability.** The parties agree that in no instance will either party be liable to the other party for incidental, special or consequential damages.
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. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Stryker hereby verifies that Stryker and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Stryker does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Stryker does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Stryker does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade

association” have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

11. **Conflict.** In the event there is a conflict between this Addendum and the attached Exhibits, this Addendum controls to the extent of the conflict.
12. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, STRYKER ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

{Execution page to follow}

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all Parties by and through the Parties or their agents or authorized representatives. All Parties hereby acknowledge that they have read and understood this Addendum and the exhibits hereto. All Parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

STRYKER SALES, LLC, through its Medical Division

KP George, County Judge

Tom Tackabury

Authorized Agent- Signature

ATTEST:

Tom Tackabury

Authorized Agent- Printed Name

Laura Richard, County Clerk

Sr. Sales Manager, ProCare

Title

Date

8/25/23

Date

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

EXHIBIT A: PROCARE PROPOSAL AND SERVICE PLAN AGREEMENT DATED 5/10/2023
(Proposal ID #230510092641)
EXHIBIT B: SOLE SOURCE LETTER

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EXHIBIT A

**PROCARE PROPOSAL AND
SERVICE PLAN AGREEMENT
DATED 5/10/2023
(Proposal ID #230510092641)**

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

3800 E. Centre Ave
Portage, MI 49009

Date: 5/10/2023
ID #: 230510092641

PROCARE PROPOSAL SUBMITTED TO:

Billing Acc Num: 1077940
Shipping Acct Num: 1077940

Name: Rita Graeber
Title: Deputy Chief
Phone: (271) 633-7088
Email: rita.graeber@fortbendcountytexas.gov

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

PROCARE COVERAGE							
Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs		Total
1	6252	Stair Chair	EMS Prevent NB	27	1		\$7,830.00
2	6390	Power-LOAD	EMS Prevent	22	1		\$46,640.00
3	6506	Power Cots	EMS Prevent	26	1		\$41,964.00
4	6506	Power Cots	EMS PM Only	10	1		\$3,050.00

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.

EMS Prevent:

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

EMS PM Only:

*Includes 1 annual PM only.

Unless otherwise stated on contract, payment is expected upfront.

ProCare Total \$99,484.00

FINAL TOTAL \$99,484.00

Start Date: 8/1/2023
End Date: 7/31/2024

Stryker Signature

Date
Customer Signature
Date

Purchase Order Number

The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions of the Addendum to ProCare Proposal and Service Agreement Between Stryker and Fort Bend County. The terms and conditions referenced in the immediately preceding sentence do not apply where Customer and Stryker are parties to a Master Service Agreement.

If contract is over \$5,000 please send hard copy PO

This is not an invoice. A physical invoice will be mailed.
Remit payment to: P.O. Box 93308 Chicago, IL 60673-3308

COMMENTS:

Please email signed Proposal and Purchase Order to 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.

SERIAL NUMBER SHEET			
Item No.	Model	Serial Number	Program
1	6252	2204010000205	EMS Prevent NB
2	6252	2204010000206	EMS Prevent NB
3	6252	2002010000131	EMS Prevent NB
4	6252	170241784	EMS Prevent NB
5	6252	170241785	EMS Prevent NB
6	6252	170241786	EMS Prevent NB
7	6252	170241787	EMS Prevent NB
8	6252	170241788	EMS Prevent NB
9	6252	180239911	EMS Prevent NB
10	6252	180239912	EMS Prevent NB
11	6252	180239913	EMS Prevent NB
12	6252	180239914	EMS Prevent NB
13	6252	180239915	EMS Prevent NB
14	6252	180239916	EMS Prevent NB
15	6252	180239917	EMS Prevent NB
16	6252	180239918	EMS Prevent NB
17	6252	180239919	EMS Prevent NB
18	6252	1905010000032	EMS Prevent NB
19	6252	1905010000033	EMS Prevent NB
20	6252	1905010000034	EMS Prevent NB
21	6252	1905010000035	EMS Prevent NB
22	6252	1905010000036	EMS Prevent NB
23	6252	1905010000037	EMS Prevent NB
24	6252	1905010000038	EMS Prevent NB
25	6252	1905010000039	EMS Prevent NB
26	6252	1905010000040	EMS Prevent NB
27	6252	1908010000068	EMS Prevent NB
28	6390	2107012400252	EMS Prevent
29	6390	2105012400102	EMS Prevent
30	6390	2105012400096	EMS Prevent
31	6390	2104012400275	EMS Prevent
32	6390	2104012400274	EMS Prevent
33	6390	2104012400272	EMS Prevent
34	6390	2003003400142	EMS Prevent
35	6390	2003003400141	EMS Prevent
36	6390	2003003400140	EMS Prevent
37	6390	2003003400139	EMS Prevent
38	6390	1903003400308	EMS Prevent
39	6390	1903003400307	EMS Prevent
40	6390	1903003400306	EMS Prevent
41	6390	1903003400305	EMS Prevent
42	6390	170140795	EMS Prevent
43	6390	2203012400467	EMS Prevent
44	6390	2203012400469	EMS Prevent
45	6390	2205012400043	EMS Prevent
46	6390	2205012400044	EMS Prevent
47	6390	2205012400045	EMS Prevent
48	6390	2205012400072	EMS Prevent
49	6390	2205012400021	EMS Prevent
50	6506	160139764	EMS Prevent
51	6506	170241400	EMS Prevent
52	6506	170241499	EMS Prevent
53	6506	170241500	EMS Prevent
54	6506	170241501	EMS Prevent
55	6506	180139895	EMS Prevent
56	6506	180139896	EMS Prevent
57	6506	180139897	EMS Prevent
58	6506	180139898	EMS Prevent
59	6506	2003003500063	EMS Prevent
60	6506	2003003500064	EMS Prevent

61	6506	2003003500065	EMS Prevent
62	6506	2003003500066	EMS Prevent
63	6506	2003003500067	EMS Prevent
64	6506	2003003500068	EMS Prevent
65	6506	2003003500069	EMS Prevent
66	6506	2003003500024	EMS Prevent
67	6506	2010020700002	EMS Prevent
68	6506	2010020700096	EMS Prevent
69	6506	2010020700102	EMS Prevent
70	6506	2010020700151	EMS Prevent
71	6506	2102020700004	EMS Prevent
72	6506	2103020700001	EMS Prevent
73	6506	2103020700013	EMS Prevent
74	6506	2103020700020	EMS Prevent
75	6506	2103020700029	EMS Prevent
76	6506	2203020700060	EMS PM Only
77	6506	2203020700077	EMS PM Only
78	6506	2203020700086	EMS PM Only
79	6506	2203020700121	EMS PM Only
80	6506	2203020700122	EMS PM Only
81	6506	2203020700025	EMS PM Only
82	6506	2203020700061	EMS PM Only
83	6506	2203020700074	EMS PM Only
84	6506	2203020700095	EMS PM Only
85	6506	2203020700099	EMS PM Only

Purchase Order Form



Account Manager _____
Cell Phone _____

Purchase Order Date _____
Expected Delivery Date _____
Stryker Quote Number 230510092641

Check box if Billing same as Shipping ☐

BILL TO		CUSTOMER #
Billing Account Num	1077940	
Company Name		
Contact or Department		
Street Address		
Addt'l Address Line		
City, ST ZIP		
Phone		

SHIP TO		CUSTOMER #
Shipping Account Num	1077940	
Company Name	Fort Bend County EMS	
Contact or Department	Rita Graeber	
Street Address	4332 Highway 36 S	
Addt'l Address Line		
City, ST ZIP	Rosenberg, TX 77471	
Phone	(271) 633-7088	

Authorized Customer Initials _____

Authorized Customer Initials _____

DESCRIPTION	QTY	TOTAL
REFERENCE QUOTE	<input type="text"/>	<input type="text"/>

Accounts Payable Contact Information

Name _____
Email _____
Phone _____

Authorized Customer Signature

Printed Name _____
Title _____
Signature _____
Date _____

Attachment Stryker Quote Number 230510092641

The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions of the Addendum to ProCare Proposal and Service Agreement Between Stryker and Fort Bend County

The terms and conditions referenced in the immediately preceding sentence do not apply where Customer and Stryker are parties to a Master Service Agreement.

*Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services on the Stryker Quote.

ProCare - PRODUCT SERVICE PLAN AGREEMENT -FORT BEND COUNTY (TX) (August 2023)

The Addendum to ProCare Proposal and Service Agreement between Stryker and Fort Bend, together with this document, sets forth the entire Product Service Plan Agreement ("Agreement") between Stryker Sales, LLC, through its Medical Division, hereinafter referred to as "Stryker", and the **FORT BEND COUNTY (TX)** named on the face of the ProCare Proposal, hereinafter, 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. Stryker accepts Customer's order expressly conditioned on Customer's assent to the terms set forth in this document. Customer's order and acceptance of any portion of the services shall confirm Customer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Stryker of any purchase order, acknowledgment, or other document from Customer specifying different and/or additional terms shall be effective unless signed by both parties.

1. SERVICE COVERAGE AND TERM

Stryker shall provide to Customer the ProCare Program(s) services (the "Services") as defined on Page 1 of the ProCare Proposal (hereinafter each, a "Service Plan"). The equipment covered under said Service Plan is set forth on the Equipment Schedule attached to the Proposal (the "Equipment"). The Services and the Service Plan(s) 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(s) coverage, term, start date, and price of the Services appear on the face of the ProCare Proposal.

2. EQUIPMENT SCHEDULE CHANGES

During the term of the Agreement, upon each party's written consent, additional Equipment may be added to the Equipment Schedule. All additions are subject to the terms and conditions contained herein. The parties shall mutually agree that Stryker shall adjust the charges and modify the Equipment Schedule to reflect any additions.

3. INSPECTION SCHEDULING

Service inspections will be scheduled in advance at a mutually agreed upon time. 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.

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 Service Representatives 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 Service Representatives 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 Service Representatives to engage in such activities shall not be a breach of this Agreement.

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, or the minimum period as may be established under the Customer's state-mandated regulations. Failure to comply with Net 30 Day (or state regulated) 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 this Agreement due to payment default.

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 the Equipment Schedule, which has been determined by a Stryker's Representative to be in good operating condition upon his/her initial inspection thereof.

9. MAINTENANCE INSPECTION

THIS AGREEMENT MAY INCLUDE PRODUCTS WHICH ARE BEYOND THEIR WARRANTY PERIOD AND TESTED EXPECTED SERVICE LIFE. ANY SUCH PRODUCT WILL BE INSPECTED SOLELY 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.

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 materially 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: (a) 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; (b) accidents; (c) catastrophe; (d) acts of god; (e) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel; (f) Equipment on which any original serial numbers or other identification marks have been removed or destroyed; or (g) Equipment that has been repaired with any unauthorized or non-Stryker parts/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 UNDER THE SERVICE PLAN 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: (a) an injury or damage due to the negligence of any person other than Stryker's employee or agent; (b) 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; (c) 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 (d) any actions taken or omissions made by any Stryker employee while under the direction or control of Customer's staff. To the extent permitted by state or local laws or regulations, Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (a)-(d) above resulting from Customer's or its employees' or agents' actions.

14. TERM AND TERMINATION

The Agreement shall commence on the date indicated on Page 1 of the Stryker Proposal 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, epidemic, pandemic, inability to obtain or shortage of material, parts, 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 insurance, including products and completed operations liability coverage, with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate covering Stryker's liability for bodily injury, personal injury, and property damage; (ii) commercial automobile liability insurance with a combined single limit of \$1,000,000.00 per accident covering Stryker's liability for bodily injury and property damage arising out of Stryker's use of owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance as required by applicable law and employer's liability insurance subject to limits of \$1,000,000 per accident and \$1,000,000 per employee and policy limit for disease covering Stryker's liability for work-related injuries to all Stryker employees. 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. Notwithstanding any requirements hereunder to the contrary, 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. 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/servicer, hereby informs Customer 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 it's 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. In performance of this Agreement, Stryker shall also comply with all applicable state and federal regulations, including but not limited to discrimination laws.

19. CONFIDENTIALITY

Except as may be mandated by local or state public disclosure regulations, the parties hereto (a) 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; DATA

- (a) 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). 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.
- (b) Customer acknowledges and agrees that Stryker may use any data arising from or related to the performance or use of the Equipment or Services.

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 either party shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate. 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 where Customer is located. 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.

EXHIBIT B

SOLE SOURCE LETTER

July 2023

Power-LOAD® Cot Fastener sole source information

To whom it may concern,

Stryker certifies that we are the sole manufacturer of Stryker's Power-LOAD Cot Fastener (Model 6390). This correspondence is to inform you of the characteristics of the Power-LOAD Cot Fastener. These characteristics can be broken down into two primary categories: **qualifications** and **ease of use**.

Stryker's Power-LOAD (Model 6390) Cot Fastener is mounted within the patient compartment and is intended to aid in the loading/unloading of patients. Stryker's Power-LOAD is the only powered cot fastening system that meets the following:

Qualifications:

- IPX6: The system is tested to withstand powerful water jets.
- IEC 60601-1 and IEC 60601-1-2: The Power-LOAD Cot Fastener conforms to industry standards for mechanical and electrical safety for medical electrical devices, as well as electromagnetic compatibility and immunity.
- BS EN-1789:2007, clause 4.5.9 when used with Power-PRO Cot and X-Restraints: This is a European dynamic crash test which subjects a 50th percentile dummy to nominal 10g deceleration for a minimum of 50ms. Following the test there shall be no sharp edges.
- SAE J3027 compliant when used with Stryker's Power-PRO Cot and X-Restraints

Ease of use:

- Provides a linear guide for loading and unloading the cot.
- Allows for remote actuation from Power-PRO foot end controls.
- Engages to the cot during loading and unloading, providing a means of lifting and lowering.
- Safe working load of 870 lb and capable of lifting patients weighing up to 700 lb.
- Mounts inside the patient compartment to prevent environmental exposure and corrosion.
- Power washable.
- Capable of inductively charging Stryker's SMRT Battery.

Please contact your Sales Representative for further information.

Sincerely,



John Guyeskey, Sr. Manager, Downstream Marketing

Stryker or its affiliated entities own, use, or have applied for the following trademarks or service marks: Power-LOAD, Power-PRO, SMRT, Stryker. All other trademarks are trademarks of their respective owners or holders.

The absence of a product, feature, or service name, or logo from this list does not constitute a waiver of Stryker's trademark or other intellectual property rights concerning that name or logo.

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Emergency Care

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