

of the parties. The parties acknowledge and agree that Services were and will be supported by good and valuable consideration during the Term of this Agreement, the sufficiency of which is acknowledged by the parties.

3. **Scope of Services.** Subject to this Addendum, Stryker will render Services to County as described in Exhibits A, B and C (the "Scope of Services"). All performance of the Scope of Services by Stryker including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County. When performing Services on-site at the County, Stryker shall comply with, and ensure that all Stryker Personnel comply with, all rules, regulations and policies of County that are communicated to Stryker in writing, including building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.
4. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. Stryker may submit invoice(s) electronically in a form reasonably acceptable to County via: apauditor@fortbendcountytexas.gov. If County disputes charges related to the invoice submitted by Stryker, County shall notify Stryker no later than twenty-one (21) days after the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar 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.
5. **Limit of Appropriation.** 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 **One Hundred Nineteen Thousand, One Hundred Fifty dollars and 85/100 (\$119,150.85)**, 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 One Hundred Nineteen Thousand, One Hundred Fifty dollars and 85/100 (\$119,150.85). 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.
6. **Public Information Act and Open Meetings Act.** Stryker expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001

ADDENDUM TO STRYKER SALES, LLC'S AGREEMENT

Contract #24-EMS-100984

FINAL-Fort Bend TX-Stryker (Med)-Addn to Sales Agmt (9-12-2024)

et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County 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 County 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. Neither the terms and conditions of the Agreement nor this Addendum are proprietary or confidential information.

Stryker expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

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. **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

ADDENDUM TO STRYKER SALES, LLC'S AGREEMENT

Contract #24-EMS-100984

FINAL-Fort Bend TX-Stryker (Med)-Addn to Sales Agmt (9-12-2024)

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.
10. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
11. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, STRYKER ACKNOWLEDGES THAT FORT BEND 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.
12. **Use of Customer Name.** Stryker may use County's name without County's prior written consent only in any of Stryker's customer lists, any other use must be approved in advance by County.
13. **Insurance.** The County has a right to comply with the insurance requirements set forth in Section 13.2 of Exhibit C through a program of self-insurance.
14. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.
15. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.
16. **Captions.** The section captions used in this Agreement are for convenience of reference only

and do not affect the interpretation or construction of this Agreement.

17. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
18. **Compliance with Laws.** Stryker shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Stryker shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Stryker in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
19. **Independent Contractor.** In the performance of work or services hereunder, Stryker shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Stryker or, where permitted, of its subcontractors. Stryker and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
20. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

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 attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED:



Emergency Medical Services Department

**STRYKER SALES, LLC, THROUGH ITS
MEDICAL DIVISION**



Authorized Agent – Signature

Tom Tackabury
Authorized Agent- Printed Name Tom Tackabury

Sr. Sales Manager
Title: Sales Manager, ProCare

9/12/2024
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: Stryker's LUCAS ProCare Quote (Quote Number: 10948657)
-Exhibit B: Stryker's Sole Source Letter
Exhibit C: Stryker Terms of Sale and ProCare Terms and Conditions



Fort Bend 1 Yr

Exhibit A

Quote Number: 10948657
Version: 1
Prepared For: FORT BEND COUNTY EMS
Attn:

Rep: Kelly Vitt
Email:
Phone Number:

GPO: CUSTOMER CONTRACT
Quote Date: 07/03/2024
Expiration Date: 08/02/2024
Contract Start: 08/01/2024
Contract End: 07/31/2025

Service Rep: Jason Evans
Email: jason.evans1@stryker.com

Delivery Address		Sold To - Shipping		Bill To Account	
Name:	FORT BEND COUNTY EMS	Name:	FORT BEND COUNTY EMS	Name:	FORT BEND COUNTY EMS
Account #:	20040609	Account #:	20040609	Account #:	20136026
Address:	4332 HWY 36 S	Address:	4332 HWY 36 S	Address:	12841 CAPRICORN ST
	ROSENBERG		ROSENBERG		STAFFORD
	Texas 77471-9108		Texas 77471-9108		Texas 77477-3912

ProCare Products:

#	Product	Description	Months	Qty	Discount %	Sell Price	Total
1.0	STR-CHAIR-PROCARE	PROCARE-SVC-STAIR-CHAIR √ Parts, Labor, Travel √ Preventative Maintenance	12	35	13.0%	\$265.35	\$9,287.25
2.0	POWERPRO-PROCARE	PROCARE-SVC-POWERPRO √ Preventative Maintenance	12	10	13.0%	\$265.35	\$2,653.50
3.0	POWERPRO-PROCARE	PROCARE-SVC-POWERPRO √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	12	19	13.0%	\$1,391.13	\$26,431.47
4.0	POWERPRO-PROCARE	PROCARE-SVC-POWERPRO √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	12	14	13.0%	\$1,391.13	\$19,475.82
5.0	POWERLOAD-PROCARE	PROCARE-SVC-POWER-LOAD √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	12	9	13.0%	\$1,977.51	\$17,797.59
6.0	POWERLOAD-PROCARE	PROCARE-SVC-POWER-LOAD √ Parts, Labor, Travel √ Preventative Maintenance √ Batteries Service	12	22	13.0%	\$1,977.51	\$43,505.22
ProCare Total:							\$119,150.85

Price Totals:



Fort Bend 1 Yr

Quote Number: 10948657
Version: 1
Prepared For: FORT BEND COUNTY EMS
Attn:

Rep: Kelly Vitt
Email:
Phone Number:

GPO: CUSTOMER CONTRACT
Quote Date: 07/03/2024
Expiration Date: 08/02/2024
Contract Start: 08/01/2024
Contract End: 07/31/2025

Service Rep: Jason Evans
Email: jason.evans1@stryker.com

Tom Tackabury 9/12/2024

Authorized Customer Signer (Printed) Date

Stryker Authorized Signature (Printed) Date

Authorized Customer Signature Date

Tom Tackabury 9/12/2024
Stryker Authorized Signature Date

Purchase Order Number

Service Terms and Conditions:
The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions negotiated between the parties hereto (July 2024) which Terms and Conditions are Exhibit C to this Quote.

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

Equipment Service Plan

Line Item #	Model	Serial #
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000032
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000037
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000040
1.0	PROCARE-SVC-STAIR-CHAIR	2303010000168
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000034
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000039
1.0	PROCARE-SVC-STAIR-CHAIR	2303010000167
1.0	PROCARE-SVC-STAIR-CHAIR	2204010000205
1.0	PROCARE-SVC-STAIR-CHAIR	170241784
1.0	PROCARE-SVC-STAIR-CHAIR	2303010000169
1.0	PROCARE-SVC-STAIR-CHAIR	2303010000166
1.0	PROCARE-SVC-STAIR-CHAIR	2303010000170
1.0	PROCARE-SVC-STAIR-CHAIR	2204010000206
1.0	PROCARE-SVC-STAIR-CHAIR	180239911
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000036
1.0	PROCARE-SVC-STAIR-CHAIR	180239916
1.0	PROCARE-SVC-STAIR-CHAIR	180239915
1.0	PROCARE-SVC-STAIR-CHAIR	180239918
1.0	PROCARE-SVC-STAIR-CHAIR	180239913
1.0	PROCARE-SVC-STAIR-CHAIR	2002010000131
1.0	PROCARE-SVC-STAIR-CHAIR	180239914
1.0	PROCARE-SVC-STAIR-CHAIR	180239919
1.0	PROCARE-SVC-STAIR-CHAIR	170241787
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000035
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000038
1.0	PROCARE-SVC-STAIR-CHAIR	1905010000033
1.0	PROCARE-SVC-STAIR-CHAIR	170241788
1.0	PROCARE-SVC-STAIR-CHAIR	170241786
1.0	PROCARE-SVC-STAIR-CHAIR	170241785
1.0	PROCARE-SVC-STAIR-CHAIR	180239912
1.0	PROCARE-SVC-STAIR-CHAIR	180239917
1.0	PROCARE-SVC-STAIR-CHAIR	1908010000068
1.0	PROCARE-SVC-STAIR-CHAIR	2306010000173
1.0	PROCARE-SVC-STAIR-CHAIR	2306010000174
1.0	PROCARE-SVC-STAIR-CHAIR	2306010000175
2.0	PROCARE-SVC-POWERPRO	2303020700076
2.0	PROCARE-SVC-POWERPRO	2304020700016
2.0	PROCARE-SVC-POWERPRO	2304020700021
2.0	PROCARE-SVC-POWERPRO	2304020700063
2.0	PROCARE-SVC-POWERPRO	2304020700064
2.0	PROCARE-SVC-POWERPRO	2304020700080
2.0	PROCARE-SVC-POWERPRO	2304020700089
2.0	PROCARE-SVC-POWERPRO	2308020700038
2.0	PROCARE-SVC-POWERPRO	2308020700042
2.0	PROCARE-SVC-POWERPRO	2308020700079
3.0	PROCARE-SVC-POWERPRO	2102020700004
3.0	PROCARE-SVC-POWERPRO	2203020700060
3.0	PROCARE-SVC-POWERPRO	2203020700086

3.0	PROCARE-SVC-POWERPRO	2203020700122
3.0	PROCARE-SVC-POWERPRO	2010020700002
3.0	PROCARE-SVC-POWERPRO	2103020700020
3.0	PROCARE-SVC-POWERPRO	2203020700099
3.0	PROCARE-SVC-POWERPRO	2203020700025
3.0	PROCARE-SVC-POWERPRO	2010020700102
3.0	PROCARE-SVC-POWERPRO	2103020700029
3.0	PROCARE-SVC-POWERPRO	2203020700061
3.0	PROCARE-SVC-POWERPRO	2203020700074
3.0	PROCARE-SVC-POWERPRO	2203020700077
3.0	PROCARE-SVC-POWERPRO	2010020700151
3.0	PROCARE-SVC-POWERPRO	2203020700095
3.0	PROCARE-SVC-POWERPRO	2203020700121
3.0	PROCARE-SVC-POWERPRO	2103020700013
3.0	PROCARE-SVC-POWERPRO	2103020700001
3.0	PROCARE-SVC-POWERPRO	2010020700096
4.0	PROCARE-SVC-POWERPRO	180139896
4.0	PROCARE-SVC-POWERPRO	180139897
4.0	PROCARE-SVC-POWERPRO	2003003500065
4.0	PROCARE-SVC-POWERPRO	2003003500064
4.0	PROCARE-SVC-POWERPRO	2003003500066
4.0	PROCARE-SVC-POWERPRO	2003003500024
4.0	PROCARE-SVC-POWERPRO	2003003500063
4.0	PROCARE-SVC-POWERPRO	2003003500068
4.0	PROCARE-SVC-POWERPRO	160139764
4.0	PROCARE-SVC-POWERPRO	180139895
4.0	PROCARE-SVC-POWERPRO	170241400
4.0	PROCARE-SVC-POWERPRO	180139898
4.0	PROCARE-SVC-POWERPRO	2003003500069
4.0	PROCARE-SVC-POWERPRO	2003003500067
5.0	PROCARE-SVC-POWER-LOAD	2003003400141
5.0	PROCARE-SVC-POWER-LOAD	1903003400306
5.0	PROCARE-SVC-POWER-LOAD	2003003400142
5.0	PROCARE-SVC-POWER-LOAD	170140795
5.0	PROCARE-SVC-POWER-LOAD	2003003400139
5.0	PROCARE-SVC-POWER-LOAD	2003003400140
5.0	PROCARE-SVC-POWER-LOAD	1903003400305
5.0	PROCARE-SVC-POWER-LOAD	1903003400308
5.0	PROCARE-SVC-POWER-LOAD	1903003400307
6.0	PROCARE-SVC-POWER-LOAD	2203012400469
6.0	PROCARE-SVC-POWER-LOAD	2105012400102
6.0	PROCARE-SVC-POWER-LOAD	2104012400272
6.0	PROCARE-SVC-POWER-LOAD	2302012400309
6.0	PROCARE-SVC-POWER-LOAD	2302012400356
6.0	PROCARE-SVC-POWER-LOAD	2302012400348
6.0	PROCARE-SVC-POWER-LOAD	2205012400043
6.0	PROCARE-SVC-POWER-LOAD	2305012400104
6.0	PROCARE-SVC-POWER-LOAD	2305012400111
6.0	PROCARE-SVC-POWER-LOAD	2104012400275
6.0	PROCARE-SVC-POWER-LOAD	2104012400274
6.0	PROCARE-SVC-POWER-LOAD	2205012400044

6.0	PROCARE-SVC-POWER-LOAD	2302012400201
6.0	PROCARE-SVC-POWER-LOAD	2305012400112
6.0	PROCARE-SVC-POWER-LOAD	2302012400353
6.0	PROCARE-SVC-POWER-LOAD	2203012400467
6.0	PROCARE-SVC-POWER-LOAD	2302012400308
6.0	PROCARE-SVC-POWER-LOAD	2105012400096
6.0	PROCARE-SVC-POWER-LOAD	2205012400021
6.0	PROCARE-SVC-POWER-LOAD	2107012400252
6.0	PROCARE-SVC-POWER-LOAD	2205012400045
6.0	PROCARE-SVC-POWER-LOAD	2205012400072

ProCare® Services

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

Exhibit B

To:	Whom it may concern
Subject:	Emergency Care parts and service
Date:	January 1, 2024

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 supplied to Stryker by approved vendors.

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
- Xpedition Stair Chair
- LUCAS 3 chest compression system
- LIFEPAK 15 monitor/defibrillator
- LIFEPAK 20e monitor/defibrillator
- LIFEPAK 1000 defibrillator
- LIFEPAK CR Plus / LIFEPAK CR2 defibrillator

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.

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.

The Quality Management System of Stryker's Medical division is ISO 13485:2016 certified.

Please contact your local Stryker representative with questions.

Exhibit C

STANDARD TERMS OF SALE (US) and ProCare TERMS & CONDITIONS (Appendix 3) CUSTOMER: FORT BEND COUNTY, TX (July 2024) – Medical Division

1. **General.** All sales of Products distributed by Stryker in the United States are subject to the following terms and conditions. In these “Standard Terms of Sale”, “Stryker” means Stryker Corporation and any of its affiliates providing Products to Customer, goods and services sold by Stryker are referred to as “Products”, and the purchaser of the Products is referred to as the “Customer.” Stryker and Customer are herein collectively referred to as “Parties”.
2. **Price and Taxes.**
 - 2.1. Prices shown on Stryker invoices are net of discounts provided at the time of purchase and Products listed on an invoice may be subject to additional rebates or discounts, for which separate documentation is provided by Stryker. Customer must:
 - (i) claim the value of all rebates or discounts in Customer’s fiscal year earned or the immediately following fiscal year; (ii) properly report and appropriately reflect and allocate prices paid net of all 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 U.S. or a state agency with access to all information from Stryker concerning discounts and rebates upon request.
 - 2.2. Stryker’s price does not include sales, use, value added, franchise, gross receipts, profits, excise, privilege, occupation, personal property, withholding and all other federal, state or local or foreign taxes, import or customs fees and duties associated with an order, however designated (collectively, “Taxes”). Customer will be liable for all Taxes, whether or not Stryker invoices Customer for such Taxes (unless Customer will provide Stryker at the time an order is submitted with an exemption certificate or other documents acceptable to taxing or customs authorities).
3. **Payment Terms.** Unless otherwise provided on Stryker’s invoice, invoices must be paid in full by Customer (30 days after the date of Stryker’s invoice. Any amount not paid on time will be subject to a late fee of 1.5% per month prorated (18% per annum), or the maximum interest rate allowable by law, whichever is the highest. Stryker, in its sole discretion, reserves the right to change terms of payment and/or discontinue further shipments or suspend services, without prejudice to any other lawful remedy, in the event that: (i) the sale would cause to be exceeded any credit limit that Stryker will have extended to Customer under Section 4 below; (ii) if at any time Stryker determines that Customer’s financial condition or credit rating does not justify a sale on credit; or (iii) Customer is at any time in default in any indebtedness or obligation that Customer owes to Stryker. Stryker may require advance payment or may ship C.O.D. Payment must be made to Stryker at the location designated in Stryker’s invoice. Customer must notify Stryker in writing of any disputed invoice within 15 days of its receipt. The writing must provide Stryker with sufficient detail regarding the basis and amount of the dispute. If Customer does not dispute an invoice within 15 days of its receipt, such invoice will be deemed to have been approved and accepted by Customer.
4. **Credit Policies.** Based upon Customer’s financial position and payment history, Stryker may, in Stryker’s sole discretion, assign Customer a credit limit. Customer’s total pending orders and outstanding accounts payable to Stryker must remain within the amount of the credit limit. Stryker may at any time, in Stryker’s sole discretion, modify or discontinue Customer’s credit limit or modify Stryker’s credit terms and other credit policies. Neither this paragraph nor any other provision of these Standard Terms of Sale makes Customer a dealer or distributor of Stryker or obligates Stryker to sell any Products to Customer.
5. **Delivery, Title and Risk of Loss.** Unless otherwise provided on an invoice, or except for Products purchased on a consignment basis, all Products purchased directly from Stryker will be shipped F.O.B. Origin, freight, insurance and handling prepaid and added to the invoice. Title and risk of loss transfer to Customer upon Stryker’s delivery of the Products to a common carrier. Shipping and delivery dates are estimates only, and time is not of the essence. Stryker may ship all the Products at one time or in portions. Stryker will have the right to determine the method of shipment and routing of the Products, unless Stryker agrees otherwise in writing. All Products will be shipped to the address indicated in the “ship to” portion of Customer’s purchase order. Stryker reserves the right to refuse to ship the Products to third parties.
6. **Consignment and Loaned Instrumentation.** To the extent Products are consigned or loaned to Customer, the additional terms and conditions set forth in in Appendix 1 hereto will apply. **Appendix 1 Not Applicable to ProCare Services for Medical products.**
7. **Stryker Communications Products.** To the extent Products purchased by Customer include equipment and installation services provided by Stryker’s Communications division, the additional terms and conditions set forth in in Appendix 2 hereto will apply. **Appendix 2 Not Applicable to ProCare Services for Medical products.**

- 8. Trade-in Equipment.** Any trade-in discount reflected on an invoice is an additional discount given by Stryker as a result of trade-in equipment remitted to Stryker by Customer at Customer's request. Customer transfers and delivers unto Stryker all of Customer's rights, title and interest in and to such trade-in equipment and all trade-in equipment must be shipped to the address designated by Stryker within the time period agreed to by the Parties. All trade-in equipment must be appropriately packaged, consistent with Stryker's instructions or if such instructions have not been provided, with good commercial practice. Customer assumes responsibility for shipment of trade-in equipment to Stryker and for risk of loss or damage during shipment. Trade-in equipment must be accompanied by a copy of the purchase order or the trade-in order number. Failure to return trade-in equipment in accordance with these instructions may result in forfeiture of the trade-in discount, for which Stryker will bill Customer, to be paid by Customer in accordance with Section 3.
- 9. Product Training.** Stryker may provide technical training, including both initial training for new users and supplemental training for existing users, as needed to promote the safe and effective use of its Products sold to Customer. Such technical training will be provided for any health care practitioner who uses or intends to use the Product and is employed by, or is on the active medical staff of, Customer. If Stryker provides the technical training to a health care professional, it may pay for or reimburse the reasonable expenses, including meals, lodging and transportation, actually incurred by eligible recipients in connection with the technical training provided under this paragraph. Such training is not deemed a condition precedent to sale of the Products or Customer's acceptance thereof.
- 10. Warranties, Return Policies and Maintenance (Products).**
- 10.1. In addition to Stryker's current standard Product warranties, if applicable, Stryker warrants that: (i) it has good title to Products shipped directly to Customer, free of all liens, claims and encumbrances; and (ii) the Products, at the time of sale, meet applicable FDA clearance or approval (as applicable) necessary for commercial sale. Notwithstanding the foregoing clause (i), Customer agrees that Stryker will 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 Stryker have been paid in full. Upon any default by Customer hereunder, Stryker will have any and all rights and remedies of secured party under the Uniform Commercial Code which right will be cumulative.
- 10.2. THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND STRYKER'S STANDARD PRODUCT WARRANTY ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS SOLD TO CUSTOMER AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.
- 10.3. Products returned by Customer for credit, replacement and/or repair will be in accordance Stryker's applicable return policy.
- 10.4. Stryker's standard Product warranties and return policies can be found at www.stryker.com/returnpolicy. Stryker's Product warranties apply only to (i) the original end-user purchaser of Products directly from Stryker or its authorized distributors and (ii) Products manufactured by Stryker. Unless otherwise agreed to in writing by Stryker, non-Stryker Products are sold "as-is" with no warranty of any kind, express or implied.
- 10.5. In addition to Stryker's standard Product warranties, service plans for repairs and maintenance may be purchased at any time for a number of Stryker's capital equipment Products. These special service plans cover repair and/or maintenance that the designated piece of equipment may require during the term of the service plan contract. Specific service plan details are available through your local Stryker sales representative. **Stryker's service plan terms and conditions are set forth in Appendix 3 hereto.**
- 10.6. Customer agrees that Stryker may monitor use of the Products, and services provided through the Products, by Customer and users and collect and use Stryker Data, including to compile information related to the provision, operation or use of a Product, facilitate the provision of support, consulting, training and other services, and verify compliance with the terms of this Agreement. Stryker may use and make publicly available, Stryker Data to the extent and in the manner permitted under applicable law. Stryker owns Stryker Data, and Customer grants Stryker a non-exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer's Content incorporated within the Stryker Data. "Stryker Data" means any data relating to or arising from the business operations or plans, services and products of Stryker or the performance or use of the Products or that may aid Stryker in optimizing resources and support; may be used to improve products or services, may be used in research and development regarding products or services; may be used in verification of security and data integrity of products or services or in resource planning, industry trends, benchmarking, or contract administration (e.g., data used for sales compensation), and any Personal Information that is aggregated and not identified or identifiable to any individual.
- 11. Software License (Product Purchase).**
- 11.1. Certain Products contain software that is installed into the Products by Stryker. Stryker owns this software and each sale of a software-containing Product is not a sale of such software; it includes only a license to use the software in the Product in which the software was initially installed solely in accordance with the documentation provided with such Product.

The license for any such software may be embedded in the equipment, the product documentation or available on <https://www.stryker.com/us/en/legal/it.html> and shall automatically apply to such product on first use of the product. ANY SOFTWARE LICENSE PROVIDED BY STRYKER DOES NOT EXTEND TO ANY MAINTENANCE OR SERVICE SOFTWARE SHIPPED TO OR LOCATED AT CUSTOMER'S PREMISES WHICH IS INTENDED TO ASSIST STRYKER EMPLOYEES OR AGENTS IN THE INSTALLATION, TESTING, SERVICE, AND MAINTENANCE OF ANY PRODUCT. CUSTOMER ACKNOWLEDGES THAT SOFTWARE PROVIDED WITH A PRODUCT MAY CONTAIN THIRD PARTY SOFTWARE (INCLUDING BUT NOT LIMITED TO OPEN SOURCE SOFTWARE LICENSES), AND THAT SUCH SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE APPLICABLE LICENSE THAT ACCOMPANIES IT. A LIST OF OPEN SOURCE SOFTWARE USED IN STRYKER PRODUCTS AND THEIR APPLICABLE LICENSES

MAY BE FOUND AT <https://www.stryker.com/us/en/legal/it.html>.

- 11.2. Any license granted by Stryker to use the software contained in its Products does not give the licensee the right to copy, alter, disassemble, reverse engineer, create derivative works of such software or to use such software in either original or modified form in any product other than the Stryker Product in which the software was initially installed by Stryker. Such use is strictly prohibited.
- 11.3. Prior to delivering a Product containing software, Stryker may, but is not required to, require Customer to execute a license agreement to acknowledge the terms of this Section 11 and any additional terms under which Stryker may elect to license its software. If a Customer elects not to sign a license agreement, Stryker reserves the right to cancel the order for the Product containing the software. If Customer accepts a Product without agreeing to any additional licensee agreement, Customer is still bound by the license term set forth herein. If Customer receives a Stryker Product without executing a license, the Customer is still bound by the applicable license.

12. Indemnification (Products).

- 12.1. Stryker agrees to indemnify Customer for third party liability ("Claims") that Customer is adjudicated to have directly as a result of:
- 12.2. (i) a defect in workmanship or materials of the Products that are manufactured by Stryker; or (ii) a defect in the reprocessing services, for any Products that are subject to Stryker's reprocessing services. This indemnification does not apply to Claims arising from: (a) 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 labeling, manuals and/or instructions for use of the Products; (c) the use of any product (or any accessories) not purchased from Stryker; (d) abnormal wear and tear or damage caused by misuse or by Customer's failure to perform normal and routine maintenance as set out in the maintenance manual and/or operating instructions provided with Products, or as demonstrated by an authorized Stryker representative; or (e) Product that has been modified, altered, or repaired by any person other than an employee or agent of Stryker. Customer agrees to indemnify Stryker against any Claims to the extent arising from (a) through (e) above due to the negligent acts or omissions of Customer or its officers, employees, representatives or agents. The rights and obligations relating to indemnification for any Claims relating to a Product are expressly defined only by these Standard Terms of Sale. Neither Stryker nor Customer have any rights or obligations to a defense against any Claim relating to the Products.
- 12.3. Stryker's indemnification obligations under this Section 12 are conditioned on Customer promptly providing Stryker with (i) timely written notice of any Claim for which indemnification is sought; (ii) reasonable assistance and all available non-proprietary information reasonably required in the defense or settlement of any Claim; and (iii) sole control over the defense against any Claim and the settlement of any Claim; provided, however, that Stryker will not agree to any settlement or compromise that imposes or results in any finding of fault or any restriction or obligation on the part of Customer without Customer's prior written consent (which will not be unreasonably withheld).

13. Insurance.

- 13.1. Stryker will maintain general liability insurance, including coverage for Products and completed operations, auto liability insurance and workers' compensation and employer's liability insurance subject to appropriate limits covering claims alleging negligence by or liability of Stryker that might arise out of sales of Products by Stryker hereunder. To the extent permitted by applicable laws and regulations, Stryker has the right to comply with this requirement through a program of self-insurance. When requested by Customer in writing, Stryker will furnish an insurance certificate or other documentation evidencing the insurance or self-insurance coverage required above.
- 13.2. Customer will maintain appropriate types of liability insurance subject to appropriate limits covering claims alleging negligence by or liability of Customer that might arise out of purchases of Products by Customer hereunder, including liability arising out of Customer's indemnity obligations set forth in Section 12 above. To the extent permitted by applicable laws and regulations, Stryker has the right to comply with this requirement through a program of self-insurance. When requested by Stryker in writing, Customer will provide a certificate of insurance evidencing such coverage.

14. Limitation of Liability (Product Purchase). STRYKER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THESE STANDARD TERMS OF SALE (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) WILL NOT

EXCEED THE PURCHASE PRICE OF THE APPLICABLE PRODUCTS MINUS DEPRECIATION OR IN THE CASE OF SERVICES, SERVICE FEES PAID BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. NEITHER PARTY WILL BE ENTITLED TO, NOR WILL BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, PROFITS OR REVENUE OR BUSINESS INTERRUPTION.

- 15. Confidentiality (Products).** Stryker and Customer: (i) will hold in strictest confidence Product pricing, proposals, invoices 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; (ii) hereby covenant that, subject to Section 2.1, they will not disclose such information to any third party without prior written authorization of the one to whom such information relates; and (iii) agree that any breach or threatened breach of this section may cause irreparable harm, that a remedy at law will be inadequate to remedy such a breach or threatened breach, and that this section will be enforceable by way of a restraining order or injunction, without the necessity of posting a bond, in addition to any other available legal remedies.
- 16. Default.** In the event of Customer's default in payment for the Products purchased hereunder, Customer will be responsible for all reasonable costs and expenses (including reasonable attorney's fees) incurred by Stryker in collection of any sums owing by Customer, and Stryker will not be obligated to make any further deliveries to Customer. Should Customer elect to cancel its order, in whole or in part, Customer will be liable to Stryker for any non-refundable deposits and reasonable cancellation charges that will include, but not be limited to, all costs and expenses incurred by Stryker in connection with procuring and filling Customer's purchase order.
- 17. Unavoidable Delay.** If Stryker is not able to finish and deliver the Products to Customer on time because of anything that Stryker cannot control (such as act of God, casualty, labor trouble, accidents or unavailability of supplies or transportation), then the estimated delivery time will be extended accordingly, and Stryker will not be liable to Customer for any damages that the delay causes.
- 18. Compliance with Law; Not For Resale or Export.** Customer represents and warrants that it: (i) will comply with all applicable laws and regulations of the various states and of the United States in the use of the Products; and (ii) is buying Product(s) for its internal use only, and not for resale or export.
- 19. Miscellaneous.** These Standard Terms of Sale constitute the entire agreement between the Parties with respect to the purchase of Products, and any modification or amendments must be in writing and signed by both Parties. The Agreement and these Standard Terms of Sale are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer. Any additional, different, or conflicting terms and conditions on any such document issued by Customer at any time are hereby rejected by Stryker and will not be binding in any way on Stryker. Neither Party will transfer or assign any or all of its rights or interests, or delegate any of its obligations, hereunder, without the prior written consent of the other Party (which consent will not be unreasonably withheld); provided, however, Stryker may assign its rights or interests, or delegate its obligations, in whole or in part, to any of its affiliates without the prior consent of Customer. The Standard Terms of Sale and the Agreement will be binding upon, will inure to the benefit of, and be enforceable by permitted successors and assigns of the Parties. The rights and remedies conferred under the Agreement and under these Standard Terms of Sale apply only to Stryker and Customer, and will not be construed to inure to the benefit of or provide any right of action to any other person, including without limitation any patient or third-party payor. In the event that any provision of these Standard Terms of Sale is determined to be unenforceable or invalid, such provision will nonetheless be enforced to the fullest extent permitted by applicable law, and such determination will not affect the validity and enforceability of any other remaining provisions. These Standard Terms of Sale will be governed by and construed in accordance with the laws of the State of Texas as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles.
- 20. Professional Services.** Stryker may provide professional services to Customer, including, but not limited to, consulting, advisory, program development and implementation and data analytics services. Such services are only provided to Customer, and governed by, separate services contracts entered into by Stryker and Customer and are not subject to these Standard Terms of Sale.

APPENDIX 3 - PROCARESM SERVICES – TERMS AND CONDITIONS
CUSTOMER: FORT BEND COUNTY, TX (JULY 2024)– Medical Division

1. The terms of this Appendix 3 will apply to Customer's purchase of Services under a Stryker Service Plan (as defined Section 1 below). In the event of a conflict or inconsistency between the Standard Terms of Sale and this Appendix 3, relative to a Service Plan, this Appendix 3 will govern.
2. **Service Plan Coverage.** Stryker will perform the repair and maintenance services (collectively, the "Services") more particularly described in each service plan (the "Service Plan") if entered into by and between Stryker and Customer. The Services will cover the capital equipment (if applicable) identified in the Service Plan (collectively, the "Equipment").
3. **Service Plan Terms and Conditions.** In addition to each Service Plan's coverage terms and conditions, the Services will be subject to the PROCARESM Services Terms and Conditions set forth below.
4. **Term and Termination.**
 - 4.1. Term. The Term of each Service Plan (the "Term") will continue so long as Services are being provided under a Service Plan. Notwithstanding the foregoing, Stryker may change the amounts due as noticed thirty (30) days prior to any renewal.
 - 4.2. Termination for Cause. Either Party may terminate a Service Plan upon written notice to the other Party in the event the other Party breaches the Service Plan and fails to cure the breach within thirty (30) days after receipt of written notice thereof. In the event of such termination, Customer will be entitled to receive from Stryker a refund of all amounts prepaid by Customer under a Service Plan for Services that have not yet been provided by Stryker at the time of such termination, and Stryker will be entitled to receive from Customer payment for all Services that have been provided by Stryker prior to such termination.
 - 4.3. Termination for Convenience. Either Party may terminate this Agreement at any time upon sixty (60) days prior written notice to the other. If Customer has made advance payments, Stryker will provide prorated refund to the Customer for the remaining balance of the term, and any Equipment in Stryker's possession will be promptly returned to Customer.
 - 4.4. Survival of Certain Provisions. The provisions of Term and Termination, Confidentiality, Non Solicitation and Non Hire, Limitations of Liability, Changes, and Assignment will survive the expiration or termination of this Agreement and will be binding to the respective successors, assigns, subsidiaries or affiliates of the Parties.
5. **Product Maintenance.** The Service Plan is 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 covenants and agrees that its appropriate user personnel will follow the instructions and contents of those manuals, labels and inserts.
6. **Warranty; Limitations of Warranty and Liability (Services).** During the Term, Stryker warrants, with the exception of software maintenance services which, if applicable, will be as specified in the Service Plan, the following:
 - 6.1. Stryker has the experience, capability and resources to perform under the Service Plan, and Stryker further represents and warrants that the Services will be performed in a workmanlike manner and with professional diligence and skill;
 - 6.2. Services will comply with all applicable laws and regulations and all applicable standards set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association or pertinent governing, accrediting or advisory body, including The Joint Commission having authority to set standards for healthcare facilities;
 - 6.3. If the Services are to be performed on Customer's premises, Stryker represents and warrants that Stryker will comply with all applicable safety laws and Customer's then current safety and other applicable regulations, all human resource policies and health and drug and alcohol screening policies; provided that Customer has provided advance written notification of such rules, regulations and policies to Stryker;
 - 6.4. Stryker currently has, or prior to the commencement thereof, will obtain, pay for, and maintain any and all licenses, fees, and qualifications required to perform the Services.
 - 6.5. Stryker will maintain the Equipment in good working condition. Equipment and Equipment components repaired or replaced under this Service Plan continue to be warranted as described herein during the Term. When Equipment or component is replaced, the item provided in replacement will be the customer's property and the replaced item will be Stryker's property. If a refund is provided by Stryker, the Equipment for which the refund is provided must be returned to Stryker and will become Stryker's property.

6.6. TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, AND STRYKER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO INSTANCE WILL STRYKER BE LIABLE TO CUSTOMER FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS.

7. Limitations and Exclusions from Service Plan. Customer will use commercially reasonable efforts to cooperate with Stryker in connection with Stryker's performance of the Services. Customer understands and acknowledges that Stryker ProCare employees will not provide surgical or medical advice, will not practice surgery or medicine, will not be involved in any manner which may be construed as practicing surgery or medicine, will not come in 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 will 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 for such presence during surgery.

Notwithstanding any other provision set forth herein, the Service Plan does not cover the following, as determined by Stryker in its sole discretion: (i) abnormal wear or damage caused by reckless or intentional misconduct, abuse, neglect or failure to perform normal and routine maintenance as set out in the applicable maintenance manual or operating instructions provided with the Equipment; (ii) accidents, catastrophe, fire, flood or act(s) of God; (iii) damage resulting from faulty maintenance, improper storage, repair, handling or use, damage and/or alteration by non-Stryker authorized personnel; (iv) service necessary due to the failure of the Customer or anyone under its control to comply with written instructions or recommendations; (v) equipment on which any original serial numbers or other identification marks have been removed or destroyed; (vi) damage caused as a result of the use of the Equipment beyond the useful life, if any, specified for such equipment in the user manual; (vii) service Stryker cannot perform because the Equipment has been discontinued or its parts have been discontinued or made obsolete; (viii) service to the Equipment if the Equipment or the Equipment site is contaminated with blood or other potentially infectious substances; or (ix) 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 a Service Plan and any complimentary loaner programs thereunder if Equipment is used with accessories not manufactured by Stryker. If, at any time, upon inspection of the Equipment in service, Stryker deems any single unit of Equipment to be unserviceable, a record and report of such will be made, and provided to the Customer in writing on the date of service.

8. Indemnification (Services).

8.1. Stryker will indemnify and defend Customer against any third party liability and/or damages ("Claims") that Customer may incur directly as a result of bodily injury (including death) or property damage arising solely from the gross negligence, willful misconduct or omissions of Stryker or its employees agents, or contractors in the course of providing Services. The foregoing indemnification will not apply to any Claims arising from: (i) an injury or damage due to the negligence of any person other than a Stryker employee or agent; (ii) the failure of any person other than a Stryker 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; (iv) abnormal wear and tear or damage caused by misuse or by Customer's failure to perform normal and routine maintenance as set out in the maintenance manual and/or operating instructions provided with the Equipment, or as demonstrated by an authorized Stryker representative; or (v) any equipment or any part thereof that has been modified, altered or repaired by any person other than Stryker's employee or agent.

8.2. Stryker's indemnification obligations under this Section 7 are conditioned on Customer promptly providing Stryker with (i) timely written notice of any Claim for which indemnification is sought; (ii) reasonable assistance and all available non-proprietary information reasonably required in the defense or settlement of any Claim; and (iii) sole control over the defense against any Claim and the settlement of any Claim; provided, however, that Stryker will not agree to any settlement or compromise that imposes or results in any finding of fault or any restriction or obligation on the part of Customer without Customer's prior written consent (which will not be unreasonably withheld).

9. Confidentiality (Services).

10.1

10.2 All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the course of the Agreement, will be treated by both Parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and will not be released, disclosed, or published to any party other than as required or permitted under applicable laws.

11 **Non-Solicitation and Non-Hire.** Customer agrees that, during the Term and for a period of one (1) year following the termination or expiration of a Service Plan, it will not solicit any employees of Stryker to terminate their employment with Stryker, unless Stryker consents in writing. Nothing herein will prohibit Customer from hiring employees of Stryker who respond to a general employment solicitation such as a newspaper advertisement.

12 **Background Check.** Stryker warrants that all of its employees who will be on a Customer's premises to perform Services will have undergone a background check as part of Stryker's hiring practice and/or as required by Customer's vendor credentialing program. The background check consists of the following:

- Criminal background check
- National sex offender registry check
- Education verification
- Employment history
- SSN verification
- Driving record
- Government sanction/watch lists

During the Term, a Customer may request a conference with Stryker at any reasonable time regarding the performance, behavior or expectations of any Stryker service personnel who are assigned to Customer's facility. Any Stryker service personnel who willingly and knowingly violates Customer's rules, regulations, procedures, or policies may be removed from Customer's facility at Customer's option and will be replaced by Stryker promptly.

13 **Changes.** At any time during the Term, and upon each Party's written consent, additional Services or Equipment may be added or deleted from a plan. Such changes will be governed by the terms and conditions of the Service Plan. Stryker may modify the applicable Service Plan to reflect adjustments to charges attributable to plan changes.

14 **Parts and Subcontracting.** Stryker may elect to use new or used parts related to the Services in its sole discretion. Stryker reserves the right to hire subcontractors to perform the Services.

15 **Independent Contractor.** The Parties are independent contractors with respect to one another. However, to the extent Stryker, Stryker personnel or subcontractors come to Customer's property, to the extent applicable, they will follow Customer's written and posted work place policies.
