

AMENDMENT TO STRYKER/PROCARE AGREEMENT

This Amendment to Stryker/ProCare Agreement is made and entered into this ____ day of _____, 2020, by and between Levy County, a political subdivision of the State of Florida, and Stryker Sales Corporation, acting through its Medical Division, a/k/a Stryker Medical (a division of Stryker Corporation).

WHEREAS, the parties desire to enter into an Agreement governing services described in and consisting of a Stryker Quote for (6) Lucas devices, 6.29.20, Quote Number 10201872 for account number 1063578 and account name Levy County EMS (such Quote will be referred to individually as the "Quote"), plus the Stryker Emergency Care - PURCHASE TERMS AND CONDITIONS – LEVY COUNTY, EMS (July 2020) attached to the Quote (such Purchase Terms and Conditions will be referred to individually herein as the "Terms"), plus the SERVICE AGREEMENT – ProCare – Levy County EMS (June 2020) (such Service Agreement will be referred to individually herein as the "Service Agreement") (the Quote, the Terms and the Service Agreement will be referred to herein collectively as the "Agreement"); and

WHEREAS, the parties desire to amend provisions of the Agreement as contained in this Amendment to Stryker/ProCare Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. **Parties.** The parties to the Agreement are Levy County, a political subdivision of the State of Florida (herein "Customer" or "Buyer"), and Stryker Sales Corporation, acting through its Medical Division, a/k/a Stryker Medical (a division of Stryker Corporation) (herein "Stryker" or "Seller"). Any references in the Agreement to Levy County EMS will be interpreted to mean Customer and not Customer's department providing emergency medical services.

2. **Definitions.** Any terms used in this Amendment will have the same meanings or definitions assigned to them in the Agreement, unless amended by this Amendment or unless the context clearly indicates otherwise.

3. **Governing Document.** Notwithstanding any other provisions contained in the Agreement or in a Service Plan, in the event of any conflict between the provisions of the Agreement or a Service Plan and this Amendment, the provisions contained in this Amendment will apply and control.

4. **Travel Expenses.** In the event any travel expenses are incurred by Stryker in providing service inspections as provided in Section 3 of the Service Agreement, or in any other provision of the Agreement, for any other such travel costs will be at the rates provided for authorized persons as provided in Section 112.061, Fla. Stat., and Levy County Resolution 2013-09. Customer will not pay for any travel costs incurred by Stryker that exceed the rates designated in this section.

5. **Final Agreement.** The Agreement, together with this Amendment, is the final agreement between the parties for the purchase of products and services contained in the Quote. Upon execution of this Amendment by the parties, the provisions of the **Deal Consummation** paragraph on page 3 of the Quote will have no further force and effect.

6. **Payment.** Notwithstanding the payment terms contained in the **Terms** paragraph on page 3 of the Quote, in the **Payment** paragraph of the Terms, and in Section 6 of the Service

Agreement, all invoices and payments therefor will be governed by the provisions of the Florida Local Government Prompt Payment Act, sections 218.70 through 218.79, Fla. Stat.

7. Indemnification. The last sentence of Section 13 of the Service Agreement is deleted in its entirety.

8. Term and Termination. The first sentence of Section 14 of the Service Agreement is replaced with the following sentence: The Services under this Service Agreement shall commence on the Start Date indicated on Page 1 of the Quote and shall continue until the End Date indicated on Page 1 of the Quote, or unless otherwise cancelled by either party by giving ninety (90) days prior written notice of such cancellation to the other party.

9. Confidentiality. The provisions of the **Confidentiality Notice** paragraph on page 3 of the Quote, and all the provisions of Section 19 of the Service Agreement, are deleted in their entirety and replaced with the following:

The parties acknowledge that the Agreement and all of its provisions are subject to the provisions of Chapter 119, Fla. Stat., governing public records. In the event Stryker submits any materials or information to Customer that Stryker contends are confidential proprietary, Stryker will provide notice to Customer that it designates such materials or information as confidential ("Confidential Information"). In addition, Stryker certifies, and will provide support to Customer upon request, that any Confidential Information it identifies to Customer qualifies as a "trade secret" as that term is defined in s. 812.081, Fla. Stat. In the event Stryker provides notice to Customer of any Confidential Information, Customer may not disclose such Confidential Information without a court order; provided that the Confidential Information qualifies as a "trade secret" pursuant to s. 812.081, Fla. Stat. In the event that a public records request is made to Customer for the Confidential Information, Stryker shall indemnify, defend and hold harmless Customer from any and all costs or liabilities in any action to require Customer to provide the Confidential Information, including but not limited to all litigation costs, and including but not limited to attorney fees of Customer and any requester of the Confidential Information.

10. Miscellaneous. Section 21 of the Service Agreement will be amended by adding the following sentence after the first sentence of such Section 21: Stryker will provide notice promptly to Customer in the event Stryker assigns this Agreement or any rights or interests under this Agreement to any parent, subsidiary or affiliate of Stryker.

11. Public Records. In the performance of services under the Agreement, Stryker shall:

(a) Keep and maintain public records required by Customer to perform the applicable service;

(b) Upon request by Customer's custodian of public records, provide Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the services to be provided by Stryker under this agreement if Stryker does not transfer the records to Customer; and

(d) Upon completion of the services to be provided under this Agreement, transfer, at no

cost, to Customer all public records in possession of Stryker or keep and maintain public records required by Customer to perform the services. If Stryker transfers all public records to Customer upon completion of the services, Stryker shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Stryker keeps and maintains public records upon completion of the services, Stryker shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Customer, upon request from Customer's custodian of public records, in a format that is compatible with the information technology systems of Customer.

The definitions contained in Chapter 119, Fla. Stat., apply to terms used in this section, unless alternate or more specific definitions for any such terms are provided in the Agreements.

For purposes of this agreement, the term "custodian of public records" shall mean the chief administrative official of the Customer whether it be a County Coordinator, Interim County Coordinator, County Manager, or some other similar title, or his/her designee.

IF STRYKER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO STRYKER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENTS, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TELEPHONE: (352) 486-5218

E-MAIL: levybocc@levycounty.org

MAILING ADDRESS: P.O. 310, BRONSON, FL 32621

IN WITNESS WHEREOF, this Amendment and the Agreement between the parties to which this Amendment is attached shall be effective as of the last date signed by the parties below.

STRYKER SALES CORPORATION,
acting through its Medical Division,
(a division of Stryker Corporation),
Stryker or Seller

LEVY COUNTY, a political subdivision of
the State of Florida, Customer or Buyer

By: _____
Name: _____
Title: _____
Date: _____

Matthew Brooks, Chair, Board of County
Commissioners
Date: _____

ATTEST:

Danny J. Shipp, Clerk

APPROVED AS TO FORM:

Anne Bast Brown

Anne Bast Brown, County Attorney

LUCAS (5 qty.)
Service Plan Dates: 8/21/2021-8/20/2024

z:/agr/amend.stryker.7.29.20
LR2011-129



(5) Lucas 6.29.20

Quote Number: 10201872

Remit to: **Stryker Medical**

Version: 1

P.O. Box 93308

Chicago, IL 60673-3308

Prepared For: LEVY COUNTY EMS

Rep: Summer Sutton

Attn:

Email: summer.sutton@stryker.com

Phone Number: (813) 695-2119

Quote Date: 07/01/2020

Expiration Date: 09/29/2020

Delivery Address

Name: LEVY COUNTY EMS

End User - Shipping - Billing

Name: LEVY COUNTY EMS

Bill To Account

Name: LEVY COUNTY COMMISSIONERS

Account #: 1092975

Account #: 1092975

Account #: 1063578

Address: 1251 NE COUNTY RD 343
BRONSON
Florida 32621

Address: 1251 NE COUNTY RD 343
BRONSON
Florida 32621

Address: 355 S COURT ST
BRONSON
Florida 32621

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	97576-000002	Certified Pre-owned - LUCAS 3.0 Chest Compression System -. Includes Hard Shell Case, Slim Back Plate, (2) Patient Straps, (1) Stabilization Strap,(2 Suction Cups, (1) Rechargeable Battery, and Instructions for use with each device. One year warranty.	5	\$7,500.00	\$37,500.00
2.0	11576-000060	LUCAS Desk-Top Battery Charger	5	\$926.37	\$4,631.85
3.0	11576-000071	LUCAS External Power Supply	5	\$293.29	\$1,466.45
4.0	11576-000080	LUCAS 3 Battery - Dark Grey - Rechargeable LiPo	5	\$566.33	\$2,831.65
Equipment Total:					\$46,429.95

ProCare Products:

#	Product	Description	Qty	Start Date	End Date	Sell Price	Total
5.1	78000013	On Site Prevent (no batteries) for Certified Pre-owned - LUCAS 3.0 Chest Compression System -. Includes Hard Shell Case, Slim Back Plate, (2) Patient Straps, (1) Stabilization Strap,(2 Suction Cups, (1) Rechargeable Battery, and Instructions for use with each device. One year warranty.	5	08/21/2021	08/20/2024	\$2,050.20	\$10,251.00
ProCare Total:							\$10,251.00

Price Totals:

Grand Total: \$56,680.95



(5) Lucas 6.29.20

Quote Number: 10201872

Version: 1

Prepared For: LEVY COUNTY EMS

Attn:

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep: Summer Sutton

Email: summer.sutton@stryker.com

Phone Number: (813) 695-2119

Quote Date: 07/01/2020

Expiration Date: 09/29/2020

Prices: In effect for 60 days.

Terms: Net 30 Days

Ask your Stryker Sales Rep about our flexible financing options.

AUTHORIZED CUSTOMER SIGNATURE

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

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

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

In the event of any conflict between Stryker Medical's Standard Terms and Conditions and any other terms and conditions, as may be included in any purchase order or purchase contract, Stryker's terms and conditions shall govern.

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

Stryker Emergency Care – PURCHASE TERMS AND CONDITIONS – LEVY COUNTY, EMS (July 2020)

General Terms for Capital Products

Stryker Sales Corporation, acting through its Medical Division (“Seller”) accepts Buyer’s order expressly conditioned on Buyer’s assent to the terms set forth in this document. Buyer’s order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer’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 Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. Pricing for the products and/or services is as set forth in Seller’s quote. Unless otherwise indicated on Seller’s invoice, prices do not include, and Buyer is responsible to pay, freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. All applicable sales, use, value added, excise and all other federal, state, local or foreign taxes will be invoiced in addition to the price of the goods and services unless Seller receives a copy of a valid exemption certificate from Buyer prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

Payment. Payment for goods and services shall be subject to approval of credit by Seller. Unless otherwise specified by Seller in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

Limitation of Interest. Through the purchase of Seller products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

Delays. Seller will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, or Seller’s inability to obtain goods from its usual sources.

Warranty Seller warrants its products and services in accordance with the terms of the limited warranties located at https://www.strykeremergencycare.com/globalassets/assets/general-documents/device_warranty_statement.pdf.

The remedies provided under such warranties shall be Buyer’s sole and exclusive remedies. Seller makes no other warranties, express or implied, including without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

Compliance with Law. The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Seller shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, together with such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Seller.

No Debarment. Each party represents and warrants that neither it nor any of its directors, officers, and employees: (a) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (c) are not under investigation which may result in such party being excluded from participation in such programs.

Choice of Law. The rights and obligations of Seller and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney’s fees, shall be reimbursed by the other party.

Proper Reporting.

Buyer will comply with all applicable laws and regulations relating to the accounting and application of discounts, including but not limited to all Federal and State laws and regulations regarding reimbursement and proper reporting of discounting and pricing, such as the requirements of the discount “safe harbor” located at 42 C.F.R. 1001.952(h). Pricing under this Agreement may constitute discounts on the purchase of Products, and must be properly reported and appropriately reflected as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports.

Insurance.

Seller will maintain adequate general liability insurance, including coverage for Products and completed operations, and workers compensation and employer’s liability insurance against any claim or claims, which might arise out of Seller’s performance of its obligations hereunder. Seller has the right to self-insure to comply with this requirement. When requested by Buyer, Seller will furnish an insurance certificate signed by an authorized agent evidencing such insurance coverages.

Confidential Information.

The parties hereto shall hold in strictest confidence any information and materials that are related to the business of the other party hereto or are designated by any such party as proprietary and confidential, herein or otherwise ("Confidential Information"). The parties hereby covenant that they shall not disclose such Confidential Information to any third party without prior written authorization of the party to whom such information relates. The parties agree that any breach or threatened breach of this clause would cause irreparable harm to the other party, that a remedy at law may be inadequate to remedy such a breach or threatened breach, and that this clause may be enforced by way of a restraining order or injunction in addition to any other available legal remedies.

Additional Terms for Purchase and Sale of Products.

In addition to the General Terms above, the following terms apply to all purchases of products from Seller:

Delivery. Unless otherwise specified by Seller in writing, delivery shall be FOB Seller's point of shipment and title and risk of loss shall pass to Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from Buyer, Seller will obtain transportation on Buyer's behalf and for Buyer's account. Delivery dates are approximate. Freight is pre-paid and added to Buyer's invoice. Products are subject to availability.

Inspections and Returns. Within 30 days of receipt of a shipment, Buyer shall notify Seller of any claim for product damage or nonconformity. Seller, at its sole option and discretion, may repair or replace a product to bring it into conformity. Return of any product shall be governed by the Returned Product Policy located at <https://www.strykeremergencycare.com/return-policy/>. Payment of Seller's invoice is not contingent on immediate correction of nonconformities. Buyer agrees that 30 days following receipt of shipment is a reasonable time frame within which to diligently inspect the products received and provide notice to Seller, and Buyer waives any right to reject the shipment or revoke acceptance thereafter.

No Resale. Buyer agrees that products purchased hereunder will not be resold to third parties and will not be reshipped to any persons or places prohibited by the laws of the United States of America.

Operation Maintenance.

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

Loaners. If Covered Equipment must be removed from service to complete repairs, certain Covered Equipment may be eligible for a loaner device, if one is available. Buyer assumes complete responsibility for the loaner and shall return the loaner to Seller in the same condition as received, normal wear and tear exempted, upon the earlier of the return of the removed Covered Equipment or Seller's request.

Cancellation. Buyer may cancel a Service Plan upon ninety (90) days' written notice to Seller. In the event of such cancellation, Buyer shall be responsible for the portion of the designated price which corresponds to the portion of the Service Plan subscription prior to the effective date of termination and the list-price cost of any preventative maintenance, inspections, or repairs rendered after the last anniversary date of the subscription start date.

No Solicitation. During the Service Plan subscription and for one (1) year following its expiration Buyer agrees to not to actively and intentionally solicit anyone who is employed by Seller to provide services such as those described in the Service Plan.

SERVICE AGREEMENT - ProCare - Levy County EMS (June 2020)

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

1. SERVICE COVERAGE AND TERM

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

2. EQUIPMENT SCHEDULE CHANGES

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

3. INSPECTION SCHEDULING

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

4. INSPECTION ACTIVITY

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

5. CUSTOMER OBLIGATIONS

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

6. SERVICE INVOICING

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

7. PRICE CHANGES

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

8. INITIAL INSPECTION

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

9. OPERATION MAINTENANCE

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

10. SERVICE PLAN WARRANTY AND LIMITATIONS

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

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

11. WAIVER EXCLUSIONS

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

12. LIMITATION OF LIABILITY

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

13. INDEMNIFICATION

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

14. TERM AND TERMINATION

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

15. FORCE MAJEURE

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

16. INSURANCE REQUIREMENTS

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

17. WARRANTY OF NON-EXCLUSION

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

18. COMPLIANCE

Stryker, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make all reports and disclosures required by law or contract, including without limitation properly reporting and appropriately reflecting actual prices paid for each item supplied hereunder net of any discount (including rebates and credits, if any) applicable to such item on Customer's Medicare cost reports, and as otherwise required under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)). Pricing under this Agreement (and each Service Plan) may constitute discounts on the purchase of Services. Customer represents that (i) it shall make all required cost reports, and (ii) it has the corporate power and authority to make or cause such cost reports to be made. To the extent required by law, Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96Z499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing Services pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

19. CONFIDENTIALITY

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

20. HIPAA

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

21. MISCELLANEOUS

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

22. MAINTENANCE INSPECTION

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