

OCT 13 2020

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

Approved

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: October 5, 2020

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: October 13, 2020

SPECIFIC AGENDA WORDING: Consideration of New Customer Change Request Form and the Standard Terms of Sale with Stryker for the purchase of the new Lucas Chest Compression System.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min

(Anticipated number of minutes needed to discuss item)

ACTION ITEM: X

WORKSHOP

CONSENT:

EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: X

AUDITOR:

PERSONNEL:

BUDGET COORDINATOR:

IT DEPARTMENT:

PURCHASING DEPARTMENT:

PUBLIC WORKS:

OTHER:

*****This Section to be completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____



Document number: D000000342
 Name: New customer change request

Revision: AB
 Form

Sold To: Legal entity that owns the product, where the product resides (can be ship to, bill to, payer)
Ship To: Where the product is being shipped (can be a ship to only, cannot be a PO BOX)
Payer: Who is paying the bills, where the checks are cut from (can be bill to)
Bill To: Where the physical invoices are going: mailing address (can be a bill to only)

*Division: **Medical** *Sales Representative **Gary Montana**

Request type

New customer Update/change to existing customer- customer number:
 New bill to for existing customer: New ship to for existing customer- customer number:

Corporate information

*Corporate/individual name			
DBA/AKA (If different from corporate/individual name)		Federal identification number	75-6001030
Phone	817-556-6382	Credit identifier number	
Fax	817-556-6385	Unique customer identifiers	
GPO affiliation		Anticipated dollar purchase per month	
*Products to purchase	Medical Equipment		
*A/P Contact	Cynthia Tanner or Lori Carlock		
*A/P Phone/Fax	817-556-6807		
A/P Email	ctanner@johnsoncountytexas.org or lcarlock@johnsoncountytexas.org		
Customer Comments			

*Sales tax status - Mandatory for application approval
 Sales taxable
 Sales tax exempt-Attach Resale/Exemption Certificate for each ship-to state * (If this option is selected, the form must be attached)

*How would you like to receive your invoice? (Please note selecting EDI does not sign you up for EDI; this must be done separately)
 Paper/United States Postal Service Email EDI Portal EDI and Email
 EDI and Paper/ United States Postal Service Email and Paper/ United States Postal Service
 If by Email or Portal, what is the Email or Portal address? pur@johnsoncountytexas.org

Customer information

*Type of customer	<input checked="" type="checkbox"/> New payer <input checked="" type="checkbox"/> New sold to <input checked="" type="checkbox"/> New ship to <input checked="" type="checkbox"/> New bill to		
Company name (if different from Corporate name)	Johnson County	*Type of business:	Governmental Entity
*Address	1102 E Kilpatrick St Ste B		
*City	Cleburne	*State	Texas
*County	Johnson	*Zip code	76031
*Payer (who is responsible for pymt of invoices; this is also where AR resides-address or existing account number)	Cynthia Tanner or Lori Carlock	*Phone	817-556-6305
*Bill To (address where physical invoices will go-address or existing account number)	1102 E Kilpatrick St Ste B Cleburne, Texas 76031	*Phone	817-556-6382

*Type of customer		<input type="checkbox"/> New payer	<input type="checkbox"/> New sold to	<input type="checkbox"/> New ship to	<input type="checkbox"/> New bill to
Company name (If different from Corporate name)					*Type of business:
*Address					
*City				*State	
*County				*Zip code	
*Payer (who is responsible for pymt of invoices; this is also where AR resides-address or existing account number)				*Phone	
*Bill To (address where physical invoices will go-address or existing account number)				*Phone	

*Type of customer		<input type="checkbox"/> New payer	<input type="checkbox"/> New sold to	<input type="checkbox"/> New ship to	<input type="checkbox"/> New bill to
Company name (If different from Corporate name)					*Type of business:
*Address					
*City				*State	
*County				*Zip code	
*Payer (who is responsible for pymt of invoices; this is also where AR resides-address or existing account number)				*Phone	
*Bill To (address where physical invoices will go-address or existing account number)				*Phone	

*Type of customer		<input type="checkbox"/> HCP	<input type="checkbox"/> Internal Stryker location
Company name (If different from Corporate name)			
*Address			
*City		*State	
*County		*Zip code	
Payer (who is responsible for pymt of invoices; this is also where AR resides-address or existing account number)		Phone	
Bill To (address where physical invoices will go-address or existing account number)		Phone	

Type of customer		<input type="checkbox"/> New Stryker employee
*Name		
*Address		
*City		*State
*County		*Zip code
*Workday ID number (mandatory)		*Phone

Requestor information

*Name	ROGER HARMON	*Email	judgeh@johnsoncountytexas.org
Title	County Judge	Date	October 13, 2020

* I agree to the Terms & Conditions.

*Accepting Terms & Conditions on this application does not guarantee the opening of your account. All fields must be completed in their entirety with all required attachments included or the application will be denied.

By checking the box above, the individual completing this form acknowledges and agrees to each of the following:

- I am an authorized representative of the business organization identified in the form ("Organization") with full authority to provide the information herein and to bind the Organization to the terms set forth below:
 - Stryker may process a credit check and open a new account on behalf of the Organization.
 - The Organization will pay all costs of collection, including actual out-of-pocket expenses and collection agency fees.
 - The Organization will inform Stryker immediately by written notice of any change in ownership, address, or form of business.
 - The purchases of Stryker products and services (as applicable) are subject to, and governed by, Stryker's then current standard terms of sale located at www.stryker.com/stnc.
- The contents and information on this credit application have not been altered in any way
- That the information contained herein is accurate, complete, and true



STANDARD TERMS OF SALE (US)

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 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.
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.
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.

- 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, NONINFRINGEMENT 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.

11. Software License and Warranty.

- 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. 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.
- 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 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.
- 11.4. Customer acknowledges that software provided with a Product may contain third party software licensed under open source software licenses, and that such software is subject to the terms and conditions of the open source license that accompanies it. A list of open source software used in Stryker Products and their applicable licenses may be found here www.stryker.com/patents.
- 11.5. Software packages are warranted to not contain any computer virus, Trojan horse, or software lock, and are guaranteed to operate substantially in accordance with any documentation provided with the software. This warranty is for a term of 1 year and will cover any software patches intended to eliminate any of these bugs. This software warranty DOES NOT cover any future upgrades, updates or new releases, except those required in order for the Product to meet applicable regulatory requirements. Customer must be covered under a Stryker software maintenance agreement to receive non-regulatory software upgrades, updates, and releases.

12. Indemnity.

- 12.1. Stryker agrees to indemnify Customer for third party liability ("Claims") that Customer is adjudicated to have directly as a result of: (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. 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.
- 12.2. 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. When requested by Stryker in writing, Customer will provide a certificate of insurance evidencing such coverage.
- 14. Limitation of Liability.** 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.** 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 Michigan 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 1 - CONSIGNMENT AND LOANED INSTRUMENTATION TERMS

1. Consignment.

- 1.1. Stryker will place at a Customer's designated premises on a consignment basis, such quantities and types of Product as Customer and Stryker may mutually agree upon (collectively, the "Consigned Inventory"). The initial quantities, types and applicable par levels for Consigned Inventory (and any future modification thereto) will be agreed upon in writing by the Parties. Customer must provide appropriate space to store and safeguard the Consigned Inventory.
- 1.2. All Consigned Inventory is the property of Stryker until withdrawn by Customer; however, Customer accepts all risk of loss and full responsibility for payment for all Consigned Inventory which may be used, opened, lost, or damaged. Customer must return to Stryker all damaged Consigned Inventory, and Stryker will arrange to have the damaged items destroyed. Customer must use reasonable efforts to: (i) identify all Consigned Inventory as being the property of Stryker and label it separately by Stryker division within Customer's storerooms and operating rooms; (ii) separate Consigned Inventory from property of Customer (including products housed in inventory carts); and (iii) maintain complete and accurate records concerning the Consigned Inventory.
- 1.3. Customer, in its sole discretion, will determine whether to withdraw items of Consigned Inventory. As a Product is withdrawn from the Consigned Inventory, the Product will be deemed to have been purchased by Customer, title in the Product will pass to Customer and title in the sale proceeds will vest in and belong to Stryker. Within two days from the withdrawal from consignment of any Consigned Inventory, Customer must issue to Stryker a hard copy of a purchase order for such withdrawn items. In the event Customer fails to issue a purchase order to Stryker, Customer will be in default and forfeit any agreed upon discounts and Stryker, at its option, may place Customer on credit hold and remove Consigned Inventory from Customer's premises.
- 1.4. Stryker may audit (including a physical inventory) this consignment arrangement during business hours upon 24 - hours' notice to Customer. In the event that Stryker's audit of the Consigned Inventory concludes that inventory is missing, Customer agrees that it will pay to Stryker any monies which are due and owing based on the missing inventory. In the event that Stryker's audit of the Consigned Inventory concludes that a surplus exists, Stryker will adjust consignment inventory levels to reflect the amount as determined by the audit. Customer and Stryker agree to meet within 15 days after an audit of the inventory has been taken by Stryker to resolve whether a surplus or a shortfall exists.
- 1.5. Should Consigned Inventory reach sterilization expiration, Stryker will, at its sole option, either replace the Consigned Inventory or reduce inventory levels equivalent to the amount, by item number, of expired Consigned Inventory. Notwithstanding any language to the contrary, in the event that sterilization expiration should occur while Consigned Inventory is in Customer's possession, full responsibility for ensuring the expired inventory is not used in a patient procedure remains with Customer. Stryker will be responsible for updating the Consigned Inventory as needed.
- 1.6. In the event the Consigned Inventory includes human tissue grafts, Customer agrees to: (i) comply with all applicable federal and state laws and regulations relating to the consigned human tissue grafts, including, without limitation, all applicable tissue tracking requirements and applicable standards and guidelines adopted by the American Association of Tissue Banks; and (ii) control the consigned human tissue grafts according to temperature requirements and JCAHO Tissue and Issuance Standards 17.10, 17.20, and 17.30.
- 1.7. Upon notice or expiration or termination of a consignment arrangement, Customer will, within 10 days, deliver as directed by Stryker all Consigned Inventory then in the possession or control of such Customer.

2. Loaned Instrumentation. If applicable, Stryker may provide certain of its non-disposable orthopaedic surgical instruments ("Instrumentation") to Customer as follows:

- 2.1. The quantity of Instrumentation will be as mutually agreed to by Customer and Stryker.
- 2.2. Customer will have no ownership interest in the Instrumentation; however, Customer is responsible for maintaining the Instrumentation in good condition and for using reasonable care in its handling and storage. Customer will be responsible for any loss of or damage to the Instrumentation. Upon expiration or termination of an Instrumentation loan arrangement, Instrumentation will be removed from Customer and returned to Stryker at Stryker's expense.
- 2.3. Except as otherwise provided, Instrumentation will be provided by Stryker on a loaned basis at no additional cost or expense to Customer except as noted in the preceding paragraph. The Instrumentation provided is restricted for use with the Products only and is not separately reimbursable and has no independent value. Customer will maintain appropriate property insurance on the Instrumentation during the term of any Instrumentation loan arrangement to provide coverage against loss by theft, fire damage, acts of nature or other cause.

APPENDIX 2 – STRYKER COMMUNICATIONS EQUIPMENT PURCHASE AND INSTALLATION SERVICES TERMS

The terms of this Appendix 2 will apply to Customer's purchase of equipment and any related services from Stryker's Communications division. In the event of a conflict or inconsistency between the Standard Terms of Sale and this Appendix 2, relative to equipment and services sold by the Communications division only, this Appendix 2 will govern. Stryker Communications may offer standalone software products to Customer. Such software is only licensed to Customer, and governed by, separate software license agreements entered into by Stryker Communications and Customer and are not subject to these Standard Terms of Sale, including this Appendix 2.

1. Equipment Purchases.

1.1. Payment Terms:

- 1.1.1. **Deposit:** A non-refundable deposit of 50% of the equipment purchase price will be due upon Stryker's acceptance of Customer's purchase order ("Deposit").
- 1.1.2. **Additional Payments:** Additional payments for equipment will be invoiced upon Stryker's shipment of the equipment and are payable by Customer in accordance with Stryker's Standard Terms of Sale.
- 1.1.3. **Engineering Services:** Charges for any Engineering Services (as defined in Section 1.3 below) will be invoiced by Stryker as they are performed, or upon shipment of equipment to Customer, whichever is later. Such invoices are payable by Customer in accordance with Stryker's Standard Terms of Sale.
- 1.1.4. **Contingency:** Customer may elect to include a contingency charge amount on its purchase order that may be applied as a credit for potential future changes or additions to the Stryker Communications equipment that Customer wishes to purchase ("Contingency Charge"). If Customer elects to make such a change or addition, any charges for such change or addition will be added to the equipment purchase price and will be deducted from the Contingency Charge until such Contingency Charge is exhausted. Customer may make changes or additions in an amount up to the then current balance of the Contingency Charge without initiating the Change Order process as further described in Section 1.4 below. Pricing for all equipment changed or added in such a way will be at a discount off Stryker's list price equivalent to the discount provided on the applicable purchase order. In the event of an unapplied Contingency Charge balance upon completion of the order, Customer will not be obligated to pay such amount. Unapplied Contingency Charge balances may be cancelled upon written request from the Customer.

1.2. Shipment and Installation Dates:

- 1.2.1. The Parties agree to estimate the date that installation of the equipment will occur (the "Anticipated Installation Date"). The actual dates of shipment will be mutually agreed upon between Stryker and Customer ("Shipment Date"); provided, however, that the Anticipated Installation Date may not be changed less than eight weeks prior to the scheduled Anticipated Installation Date. Stryker will use its commercially reasonable best efforts to meet all Shipment Dates requested by Customer. Customer understands that production and installation scheduling will not occur until Stryker's receipt of: (i) Customer's deposit payment pursuant to Section 1.1.1; and (ii) a completed Shipment and Installation Date Confirmation Form. If Customer requests a rescheduling of the Installation Date with less than eight - weeks' notice prior to the Anticipated Installation Date, Customer agrees to accept all shipments of ordered Products no later than the original Installation Date and, if necessary, make necessary arrangements for storage of the Stryker Communications equipment at Customer's expense until the rescheduled Installation Date.
 - 1.2.2. If Customer delays or extends shipment or installation of the equipment, Customer will arrange for and notify Stryker of the place or places to which Stryker will ship the equipment for storage at Customer's expense and all risk of loss or damage to the equipment will be the responsibility of the Customer. Stryker will invoice Customer for the equipment upon shipment and Customer agrees to pay such invoice in accordance with Stryker's Standard Terms of Sale.
- 1.3. **Engineering Services:** Stryker agrees to provide the engineering services described in the project proposal provided to Customer, if any, subject to the terms and conditions hereof ("Engineering Services").
 - 1.4. **Change Orders:** Options, upgrades and additions to Stryker Communications equipment may be available ("Change Orders"). Change Orders will require a new purchase order or an addendum to the original purchase order, which could result in changes to the total purchase price. Change Orders made less than eight weeks prior to the scheduled Installation Date may result in shipping delays and additional expenses for expedited shipping.

2. Installation Services.

- 2.1. **Payment Terms:** Charges for Installation Services (as defined in Section 2.3 below) will be invoiced upon Customer Acceptance (as defined in Section 2.2 below). If installation of the equipment is completed in phases at Customer's request, Stryker will invoice Customer separately for the Installation Services provided in each phase. Such invoices are payable by Customer in accordance with Stryker's Standard Terms of Sale.
- 2.2. **Customer Acceptance:** Acceptance of Installation Services will occur on the earlier of the following: (i) Stryker's receipt of a "Customer Acceptance Form" signed by Customer; (b) clinical utilization of Stryker Communications equipment by Customer; or (iii) 60 days after the completion of installation of Stryker Communications equipment ("Customer Acceptance").
- 2.3. **Installation Services:** The installation services to be provided by Stryker in connection with Stryker Communications equipment are further defined in the project proposal provided to Customer (the "Installation Services"). Customer's quote should include whether installation pricing includes regular working hours, nights, weekends, multiple trips (e.g. phased project installations), and/or union support. If not explicitly noted, Installation Services may not be sufficient and additional charges may apply. Please consult the appropriate Stryker Communications Sales Representative with any questions. If additional Installation Services are required: (i) because of Customer's failure to complete its Pre-Installation Responsibilities described below in Section 2.5; (ii) because of a

Customer requests to install in a manner dissimilar to that quoted (e.g. weekends only); or (iii) if the Installation Date is rescheduled with less than eight weeks' notice prior to the Anticipated Installation Date, Stryker may, at its discretion, invoice Customer an additional \$1,500 per day per installation technician.

2.4. Stryker Responsibilities

2.4.1. **Pre-Installation Meeting Responsibilities:** Stryker will facilitate an equipment pre-installation planning meeting to be held at Customer's site before construction begins. At, or before this meeting, Stryker will provide Customer and Customer representatives with Stryker Communications equipment pre-installation guide ("Pre-Installation Guide"). Additional detailed pre-installation requirements are included in the Pre-Installation Guides. All pre-installation work performed must adhere to the Pre-Installation Guide. Stryker will schedule and lead the discussions and review the Drawings (as defined in Section 2.4.2 below) with Customer's Project Manager, Clinical Department Manager and representatives from all installing contractors. Stryker will schedule and lead the discussion and review of the Pre-Installation Guide and designation of exact responsibilities of all contractors. Stryker will schedule and lead the discussion of mounting plate(s) placement, pre-install design specifications and routing requirements of all applicable services.

2.4.2. **Layout/Placement Drawings:** Stryker will provide final equipment layout/placement drawings ("Drawings") for review within five business days of acceptance of purchase order and Deposit payment. The Drawings will include product placement and configuration of services. Within six weeks after acceptance of Customer's purchase order and no less than 14 weeks before the scheduled Ship date, Customer must deliver to Stryker a copy of the signed Drawings, which have been approved by the Customer's Project Manager and the Clinical Department Manager (or respective designees). Customer understands Stryker will not schedule production until the signed Drawings are received by Stryker; and Stryker is not responsible for any direct or indirect costs related to resulting delays.

2.4.3. **Inspection and Evaluation Responsibilities:** Stryker will review superstructure requirement (e.g. weights and moments) with Customer's contractors and Project Manager. When requested, Stryker will provide Customer with knowledgeable third-party resources regarding superstructure. Any consulting done with said third parties will be at the Customer's expense. Stryker will review equipment installation procedures and process with Customer. Stryker will track construction schedules and make certain both Parties are adhering to originally agreed upon timelines. Stryker will provide Customer with specifications necessary to order applicable network services (obtaining and payment for these services are the Customer's responsibility).

2.4.4. **Installation Responsibilities:** Stryker is responsible for the equipment installation responsibilities as stated in the Pre-Installation Guide (these responsibilities apply only to purchased Stryker Communications equipment unless otherwise agreed upon in the project proposal).

2.5. Customer Responsibilities

2.5.1. **Customer Pre-Installation Meeting Responsibilities:** Customer commits to: (i) ensure representatives of Customer's contractors (e.g. electrical, mechanical, gas installer, architect, structural engineer) and Customer's Project Manager, Clinical Department Manager, and any other appropriate Customer personnel are in attendance at all meetings; (ii) provide final completion dates for completion of electrical panel test, gas performance test, and superstructure; (iii) obtain all necessary permits, inspections and/or licenses related to the proposed work; (iv) ensure that the superstructure meets the Stryker Communications requirements; (v) ensure that all Customer requirements in the Pre-Installation Guides have been addressed; and (vi) provide network access (as applicable).

2.5.2. **Customer Pre-Installation Responsibilities:** Prior to Installation Date, Customer agrees to: (i) remove all old equipment from the installation area and transport to Customer's disposal area; (ii) provide ready access to installation site(s) for Stryker Communications personnel; (iii) ensure that the installation site has been prepared in compliance with Stryker Communications specifications as detailed in the Pre-Installation Guides, (including the installation of mounting ring and other support apparatus for the equipment); (iv) ensure all conduits and gas installation provided by Customer's contractors are installed as specified in the Drawings and any applicable architectural drawings; (v) ensure equipment shipping containers (unopened) are in the installation location (including endoscopic equipment, if applicable); (vi) ensure that AC electrical circuits are installed as provided in the Pre-Installation Guides; and (vii) ensure data and other rough-in requirements specified in the Pre-Installation Guides are connected, working and complete. Customer understands and agrees to complete and send to Stryker the Install and Ship Confirmation Form at least eight weeks prior to Installation Date.

2.5.3. **Customer Installation Responsibilities:** Customer responsibilities include: (i) arrange for a locally certified electrician to complete electrical power connections to Stryker Communications equipment; (ii) arrange for a locally certified medical gas technician to test gas connections in Stryker Communications equipment; (iii) ensure that the Customer designated staff members who are responsible for product maintenance are available for instruction on basic maintenance procedures; and (iv) perform inspection and functional assessment of installed Stryker Communications equipment to agreed upon specifications and provide written notification of approval (Customer Acceptance Form) or complete a Project Punch list (nonconforming items that have no functional effect on the system) within 10 business days of completed Installation Services.

2.5.4. Stryker and Customer jointly agree to organize an inspection and valuation meeting to be held at least 30 days before Installation date. Customer is responsible for ensuring all appropriate personnel are in attendance.

APPENDIX 3 - PROCARESM SERVICES - TERMS AND CONDITIONS

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.

1. **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").
2. **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.
3. **Term and Termination.**
 - 3.1. **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.
 - 3.2. **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.
 - 3.3. **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.
 - 3.4. **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.
4. **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.
5. **Warranty; Limitations of Warranty and Liability.** 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:
 - 5.1. 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;
 - 5.2. 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;
 - 5.3. 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;
 - 5.4. 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.
 - 5.5. 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.
 - 5.6. 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.
6. **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.

7. Indemnification.

- 7.1. 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.
- 7.2. 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).

8. Confidentiality.

- 8.1. Customer must remove or secure any "Protected Health Information" ("PHI") as defined in the Health Insurance Portability and Accountability Act of 1996 from Equipment prior to Stryker performing Services. Although Stryker will make reasonably commercial efforts to secure any PHI encountered, Stryker is not responsible for the security thereof.
- 8.2. 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.

9. **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.

10. **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.

- 11. 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.
- 12. 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.
- 13. 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.
