

PROCARESM PROTECT AND ONSITE AGREEMENT TERMS

1. ProCareSM Protect Coverage.

- a. ProCareSM Protect Coverage. Stryker shall provide and Customer shall purchase ProCareSM Protect coverage (“Serviced Equipment”), subject to the limitations and exclusions contained herein (“ProCareSM Protect Coverage”):
- (i) An unlimited number of repairs of Serviced Equipment, including labor and parts, regardless of fault, except as provided in Section 4 below;
 - (ii) Replacement equipment for Serviced Equipment, if necessary. Stryker shall have sole discretion to determine whether Serviced Equipment shall be repaired or replaced; and
 - (iii) Use of loaner equipment to replace Serviced Equipment during repair, except where the item is handled through Stryker’s repair / replace program; and
 - (iv) Prioritized repairs over non-contracted customers, with no additional administration or approval process.
- b. Limitations and Exclusions from ProCareSM Protect Coverage. ProCareSM Protect Coverage does not cover the following, as determined by Stryker in its sole discretion:
- (i) Damage caused by reckless or intentional misconduct, abuse, or neglect;
 - (ii) Damage caused by accidents, catastrophe, fire, flood, or an act of God;
 - (iii) Damage caused as a result of the use of Serviced Equipment or Stryker Equipment beyond the useful life specified for the equipment in the user manual, if any;
 - (iv) Damage caused by an alteration of the Serviced Equipment or Stryker Equipment by non-Stryker personnel;
 - (v) Serviced Equipment or Stryker Equipment that have been repaired or serviced by a third party; and
 - (vi) Lightsource replacement lamps, fee-based software upgrades, voice control upgrades and disposable or consumable products or parts.

2. ProCareSM Onsite Services.

- (a) Onsite Services. Stryker will appoint the number of ProCareSM specialists requested by Customer (“ProCareSM Specialist(s)”) to provide the following services to Customer, as reasonably requested by Customer (“Onsite Services”):
- a. Installation and setup of the Serviced Equipment;
 - b. Technical instruction for Customer’s clinical staff on the safe and effective use of and the handling, setting up and breaking down all supported Stryker equipment (the “Equipment”);
 - c. Instruction, training and assistance to Customer’s clinical staff on regular maintenance and trouble shooting for the Equipment;
 - d. Technical advice and trouble shooting for the Equipment during surgical procedures;
 - e. Maintenance of the Equipment when necessary and obtaining loaner equipment, subject to Section 1(a)(iii), for Customer’s use while Serviced Equipment is being maintained or repaired;
 - f. Other reasonable assistance and technical support with the Equipment, as reasonably requested by Customer, except as provided in this Agreement;
 - g. Training in the safe and effective use of the Serviced Equipment, as often as reasonably requested by Customer; and
 - h. *[If Customer participates in the Stryker Go Green Program]* Conduct daily collection processes of Customer’s single use devices in the operating room.
- 2.2. Availability of ProCareSM Specialist(s). The ProCareSM Specialist(s) will be available to perform Onsite Services at Customer’s facility during normal business hours, Monday through Friday, not to exceed 40 hours per week, excluding nationally recognized holidays. During these times, a ProCareSM Specialist will be available for surgeries provided that Customer provides advance notice of such surgeries to the ProCareSM Specialist pursuant to a notice procedure to be mutually agreed upon by the Parties. Stryker will use its commercially reasonable efforts to notify Customer at least twenty-four hours prior to any absence.
- 2.3. Performance Review of ProCareSM Specialist(s). During the Term, Customer may request a conference with

Stryker at any reasonable time regarding the performance, behavior or expectations of the ProCareSM Specialists who are assigned to Customer's facility. Any ProCareSM Specialist who willingly and knowingly violates Customer's rules, regulations, procedures, or policies may be terminated immediately at Customer's option and shall be replaced by Stryker promptly.

2.4. Representations and Warranties Regarding Onsite Services. Stryker hereby represents and warrants to Customer that, at all times while providing Onsite Services, the ProCareSM Specialist will:

- (a) Use his or her commercially reasonable efforts to provide the Onsite Services;
- (b) Be trained and qualified to provide Onsite Services;
- (c) Perform the Onsite Services in a workmanlike manner, with professional diligence and skill, and in conformity with all applicable product specifications or set forth in the applicable instructions for use;
- (d) Have all licenses, registrations and other permissions necessary to perform the Onsite Services;
- (e) Comply in all material respects with all laws and regulations and standards applicable to Stryker's performance of the Onsite Services as set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency; and
- (f) Comply in all material respects with all rules, regulations and policies of Customer applicable to persons performing the services to be performed hereunder, including, but not limited to, HIPAA (as defined in Section 8 – Confidentiality) and all human resource policies and health and drug screening policies; provided that Customer has provided advance written notification of such rules, regulations and policies to Stryker.

2.5 Limitations on Onsite Services. Customer shall use commercially reasonable efforts to cooperate with Stryker in connection with Stryker's performance of the Onsite Services. Customer understands and acknowledges that Stryker 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 ProCareSM Specialist's refusal 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 in order for Stryker to provide Onsite Services under this Agreement and represents that it will obtain all necessary consents from patients for such presence during surgery.

3. Term and Termination.

- a. Term. Upon expiration of the Term, the Agreement shall automatically renew for one month periods until one Party provides the other Party with thirty (30) days prior written notice of its intention to terminate.
- b. Termination. Customer may terminate this Agreement immediately upon written notice to Stryker if, within thirty (30) days of Customer's written notice to Stryker describing Stryker's material breach or non-performance of this Agreement, such breach or non-performance has not been cured. Stryker may terminate this Agreement immediately upon written notice to Customer if, within thirty (30) days of Stryker's written notice to Customer describing Customer's material breach or non-performance of this Agreement, such breach or non-performance has not been cured. In the event of such termination, Customer shall be entitled to receive from Stryker a refund of all amounts prepaid by Customer under this Agreement for Onsite Services that have not yet been provided by Stryker at the time of such termination.
- c. Survival of Certain Provisions. Sections 5, 6, 7, 8 and 9 shall survive expiration or termination of this Agreement.

4. Prices and Payment. In exchange for the ProCareSM Protect Coverage and Onsite Services provided by Stryker, Customer agrees to pay to Stryker the amounts and in the frequency agreed upon by the Parties. All prices are exclusive of any applicable taxes. Payment will be due within thirty (30) days of the date of Stryker's invoice. If payment is overdue, Stryker reserves the right to: (a) charge a late fee of 1½% per month prorated (18% per annum); (b) suspend ProCareSM Protect Coverage and Onsite Services until full payment is made; and/or (c) terminate this Agreement upon written notice to Customer.

5. Product Maintenance. Our service 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's appropriate user personnel should be

entirely familiar with the instructions and contents of those manuals, labels and inserts and implement them accordingly.

6. **Indemnification.** Stryker shall indemnify and hold Customer harmless from any loss, damage, cost or expense that Customer may incur by reason of or arising out of any third party 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 ProCareSM Protect Coverage. 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 Serviced Equipment; or (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. Customer agrees to hold Stryker harmless from and indemnify Stryker for any claims or losses or injuries arising from (i), (ii), or (iii) above arising as a result of Customer's or its employees', representatives' or agents' actions.
7. **Insurance.** During the term of this Agreement, Stryker shall maintain the following insurance coverage: (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; (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.
8. **Confidentiality.** Any information provided in connection with the work contemplated by this Agreement which is treated or designated by a disclosing Party ("Disclosing Party") as confidential or which by nature of the information disclosed, the receiving Party ("Receiving Party") reasonably should know that such information is confidential, will be held in confidence. The Receiving Party will use at the least the same level of care to prevent any unauthorized use or disclosure of such confidential information as it exercises in protecting its own information of a similar nature, but in no event less than a reasonable standard of care. The Receiving Party will not, without the prior written consent of the Disclosing Party, make use of the confidential information disclosed to it other than for the purposes described in this Agreement, or disclose the Confidential Information to any person, party or entity except to such of its officers, employees and consultants to whom disclosure is necessary and who have been made aware that the confidential information is confidential and are bound to treat it as such. Confidential information shall include, but shall not be limited to, any protected health information under the Health Accountability and Portability Act of 1996 ("HIPAA").
9. **Non-Solicitation and Non-Hire of ProCareSM Specialist.** Customer agrees that, during the Term and for a period of one (1) year following its termination or expiration, it will not solicit any employees of Stryker to terminate their employment with Stryker and will not hire any employees of Stryker, unless Stryker consents in writing. Nothing herein shall prohibit Customer from hiring employees of Stryker who respond to a general employment solicitation such as a newspaper advertisement.
10. **Limitations on Warranty and Liability.** THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES PROVIDED HEREUNDER AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. STRYKER'S LIABILITY FOR ANY CLAIM HEREUNDER, WHETHER IN CONTRACT OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM THE SERVICES PROVIDED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PRICE PAID FOR SERVICE CONTRACT COVERAGE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.
11. **Equipment Schedule Changes.** At any time during the term of this Agreement, Customer may request to have additional Stryker equipment covered under this Agreement. Any such change must be approved in writing by Stryker and will be subject to additional charges. In such an event, the added equipment shall be governed by the terms and conditions of this Agreement.
12. **Assignment.** Stryker may assign or transfer its rights and/or benefits under this Agreement, in which case the assignee shall assume the rights and obligations now possessed by Stryker. Customer agrees, if so directed, to

pay directly to any assignee all amounts due under this Agreement.

13. **Parts.** Stryker may elect to use new or used parts or products in servicing or replacing Serviced Equipment in its sole discretion.
14. **Miscellaneous.** The laws of the state of Michigan shall apply to this Agreement, without regard to principles of conflicts of laws. Stryker is not liable for a delay or failure to perform caused by circumstances beyond its reasonable control. The relationship between the Parties is that of independent contractors. It is mutually agreed that Stryker is at all times acting and performing as an independent contractor with respect to Customer and nothing is intended nor shall be construed to create an employer/employee relationship between Stryker and Customer. The terms contained herein, and in the exhibits hereto contain the full and final written expression of the Parties respecting the subject matter of this Agreement. No modification or amendment of this Agreement shall be effective unless agreed to in writing and signed by authorized representatives of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement shall in no way be construed as a waiver of such provision, nor shall such failure in any way affect the right of either Party, thereafter, to enforce each and every provision of this Agreement. In the event that any provision of this Agreement is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.