

## Service agreement

### Services and pricing summary

This Service Agreement (the “**Agreement**”) is between Stryker Sales Corporation, a Michigan corporation acting through its Endoscopy division, located at 5900 Optical Court, San Jose, CA 95138 (“**Stryker**”), and the Customer identified below (“**Customer**”) (individually referred to as a “**Party**” and collectively referred to as the “**Parties**”). The effective date of this Agreement shall be the date signed by Customer below, unless a Start Date is provided below, which will then be the effective date (“**Effective Date**”). The Parties hereby agree as follows:

#### Customer information

Customer Name SAN MATEO MEDICAL CENTER (ACCT 22114)

Bill To Street: 222 W 39TH AVE City: SAN MATEO ST: CA ZIP: 94403

Shipping Addresses. Customer agrees that the following are shipping address(es):

222 W 39TH AVE  
SAN MATEO, CA, 94403, US

#### Service plan terms and conditions:

\_\_\_\_ Serviced Equipment: See Protect Service Terms and **Schedule A** – Serviced Equipment details, collectively attached hereto and made a part hereof.

\_\_\_\_ **Schedule B** – Financing Agreement, will be attached if this transaction is financed through Stryker Flex Financial.

The facility agrees Yes \_\_\_\_ or No \_\_\_\_ to move forward with the Stryker Go Green Program.

#### Payment schedule:

Start Date: 4/1/2018 Term: 36 Months Purchase Order # \_\_\_\_\_

Check Payment Option:

☐ One Payment of \_\_\_\_\_ ☐ Annual Payment of \_\_\_\_\_ ☐ Monthly Payment of \$2,899.99  
 All payments do not include applicable tax.

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

STRYKER



Contractor Signature

5-8-2018

Date

Brad Canada

Contractor Name (please print)

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COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

# Protect Service Terms

## 1. Protect Coverage.

1.1. **Protect Coverage.** Stryker shall provide and Customer shall purchase the Protect coverage set forth below for the equipment set forth on **Schedule A ("Serviced Equipment")**, subject to the limitations and exclusions contained herein ("**Protect Coverage**"):

- (i) An unlimited number of repairs of Serviced Equipment, including labor and parts, regardless of fault, except as provided in Section 1.2 below;
- (ii) Replacement equipment for Serviced Equipment, if applicable. Stryker shall have sole discretion to determine whether Serviced Equipment shall be repaired or replaced;
- (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.
- (v) Stryker may perform repairs in Customer's facility or at the applicable Stryker repair facility in Stryker's sole discretion.

1.2. **Limitations and Exclusions from Protect Coverage.** Protect Coverage does not cover the following, as determined by Stryker in its sole discretion:

- (i) Damage caused by reckless misconduct;
- (ii) Damage caused by catastrophe, fire, flood, or an act of God;
- (iii) Damage caused as a result of the use of Serviced Equipment beyond the useful life specified for the equipment in the instructions for use, if any;
- (iv) Damage caused as a result of the use of non-Stryker or non-Novadaq parts, as applicable;
- (v) Damage caused as a result of a failure to follow any instructions for use, manuals or other documentation, or the use of unauthorized or non-FDA-approved consumables with the Serviced Equipment;
- (vi) Damage caused by service or alteration of the Serviced Equipment by non-Stryker personnel, and;

Lightsource replacement lamps, fee-based software upgrades, voice control upgrades and disposable or consumable products or parts.

1.3. **Service Warranties.** Stryker represents and warrants that at all times while providing Protect Coverage to Customer under this Agreement, it and all of its employees and agents shall: (a) use commercially reasonable efforts to provide the Protect Coverage; (b) be fully trained and qualified in all respects to provide the Protect Coverage; (c) perform the Protect Coverage in a workmanlike manner to factory quality and certified to new product standards, with professional diligence and skill by certified trained specialists; (d) have all licenses, registrations and other permissions necessary to perform the Protect Coverage hereunder; and (e) comply with all applicable laws and regulations in performing the Protect Coverage.

## 2. Term and Termination.

2.1. **Term.** The Term of this Agreement shall begin on the date signed by Customer unless a Start Date is provided as shown on the Services and Pricing Summary ("**Start Date**") and continue for the duration of the Term as set forth on the Services and Pricing Summary ("**Term**"). Upon expiration of the Term, the Protect coverage under this Agreement will terminate, and may be renewed upon the written agreement of both Parties.

2.2. **Termination.** Either Party may terminate this Agreement upon sixty (60) day written notice to the other Party. 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 services that have not yet been

provided by Stryker at the time of such termination.

**2.3. Survival of Certain Provisions.** Sections 4 (Product Maintenance), 5 (Indemnification), 7 (Confidentiality), 8 (Proper Reporting of Discounts and Pricing), 9 (No-hire), 10 (Limitation on Liability), and 13 (Miscellaneous) shall survive expiration or termination of this Agreement.

3. **Prices and Payment.** In exchange for the Protect Coverage provided by Stryker, Customer agrees to pay to Stryker the amounts and in the frequency specified on the Service and Pricing Summary. 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) suspend Protect Coverage until full payment is made upon thirty (30) days advance notice to Customer; and/or (b) terminate this Agreement upon sixty (60) days written notice to Customer should the account become sixty (60) or more days past due. Any terms accompanying Customer's purchase order(s) subsequent to the execution of this Agreement are hereby rejected.

4. **Product Maintenance.** Customer remains solely responsible for adherence 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.

5. **Indemnification.**

5.1. Stryker shall indemnify, defend and hold Customer harmless from any loss, damage 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 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; (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) actions taken or omissions made by Stryker employees or agents under the control or direction of Customer, its staff and/or doctors, or its agents or representatives. Customer will hold Stryker harmless from and indemnify Stryker for any claims, losses or injuries ("**Claim/s**") arising from (i), (ii), (iii), or (iv), above arising as a result of Customer's or its employees', representatives' or agents' actions.

5.2. Each Party's indemnification obligations under this section are conditioned on the indemnified party promptly providing the indemnifying party 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 the indemnifying party shall 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 the indemnified party without such party prior written consent (which shall not be unreasonably withheld).

6. **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 the Protect Coverage 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. Customer shall maintain adequate insurance to cover liability arising out of this Agreement including liability arising out of Customer's indemnity obligations set forth in the Indemnification Section above. Upon request by Stryker, Customer will provide a certificate of insurance evidencing such coverage.

7. **Confidentiality.** Notwithstanding the Customer's responsibilities pursuant to the California Public Records Act, 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 ("**Confidential Information**"). 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. Notwithstanding the Customer's responsibilities pursuant to the California Public Records Act, 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**") , as well as the pricing information identified in this Agreement.
8. **Proper Reporting of Discounts and Pricing.** Customer shall (i) comply with all applicable laws and regulations relating to the accounting and application of discounts related to this Agreement, 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) (the "Discount Safe Harbor") or the warranties "safe harbor" located at 42 C.F.R. s 1001.952(g) (the "Warranty Safe Harbor");(ii) properly report and appropriately reflect all prices paid under this Agreement net of all discounts as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports and (iii) retain a copy of this Agreement and all other communications regarding this Agreement, together with the invoices for purchases or lease and shall permit agents of the U.S. Department of Health and Human Services or any state agency access to such records upon request.
9. **Service Personnel.** Protect Coverage may be provided directly by Stryker personnel or by subcontractors at Stryker's discretion. Customer agrees to provide Stryker personnel reasonable access to Serviced Equipment for repair purposes. Customer agrees that, during the Term and for a period of one (1) year following its termination or expiration, it will not hire any employees of Stryker.
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, EXPRESS 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 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. STRYKER SHALL HAVE NO LIABILITY FOR ANY INJURIES OR DAMAGE TO PROPERTY IN CONNECTION WITH THIRD PARTY EQUIPMENT, INCLUDING DEFECTS IN MANUFACTURING OR DESIGN. IF STRYKER IS PROVIDING SERVICES RELATED TO STERILIZATION, STRYKER SHALL HAVE NO LIABILITY RELATED TO THE PERFORMANCE OF ANY STERILIZATION EQUIPMENT.
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. **Parts.** Stryker may elect to use new or used parts or products in servicing or replacing Serviced Equipment in its sole discretion.
13. **Miscellaneous.** The laws of the state of California 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. The individual signing on behalf of the Customer above represents and warrants that such individual has full power and authority to execute and deliver this Agreement on behalf of Customer. 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. Either Party may assign or transfer its rights and/or benefits under this Agreement. The terms contained herein, and in the schedules 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. Customer agrees that the terms contained in this Agreement govern the sale and purchase of the products and/or services included. Where any terms and/or conditions offered by Customer conflict with the terms in this Agreement, the latter will control unless Stryker Endoscopy's Legal Counsel provides express written consent to the contrary. 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.
14. **Contract Dollar Amount.** In no event shall total payment under this Agreement exceed ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000).
15. **Equal Benefits Ordinance.** Stryker shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Stryker's employee is of the same or opposite sex as the employee.
16. **Employee Jury Service.** Stryker shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Stryker's employee is of the same or opposite sex as the employee.
17. **History of Discrimination.** Stryker certifies that no finding of discrimination has been issued in the past 365 days against Stryker by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Stryker within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Stryker shall provide Customer with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the Customer.
18. **Compliance with Living Wage Ordinance.** As required by Chapter 2.88 of the San Mateo County Ordinance Code, Stryker certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all

Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

19. **Exhibits and Attachments.** The following schedules, exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Schedule A – Serviced Equipment

Exhibit E - Corporate Compliance SMMC Code of Conduct



# Schedule A

## 1. Serviced Equipment

### PROCARE SERVICE

Item No.	Part No.	Description	Years	Quantity	Sell Price Ea. / Month	Total Monthly Sell Price
1	1288210105	1288HD CAMERA HEAD	3	8	\$109.50	\$876.04
2	1288020122	1288 C-MOUNT COUPLER	3	8	\$37.76	\$302.08
3	0502104030	HD 4MM X 30Â° ARTHROSCOPE SPEEDLOCK A/C	3	4	\$147.27	\$589.06
4	1288TWR	1288 TOWER SERVICE CONTRACT	3	3	\$151.04	\$453.12
4.1	1288010000	1288HD CAMERA CONTROL UNIT	3	3	\$0.00	\$0.00
4.2	0220210000	L9000 LIGHT SOURCE	3	3	\$0.00	\$0.00
4.3	0240060100	SDC3 PACKAGE	3	3	\$0.00	\$0.00
4.4	0620040610	PNEUMO SURE XL HIGH FLOW INSUFFLATOR	3	3	\$0.00	\$0.00
4.5	0240031010	SYNK WIRELESS TRANSMITTER	3	3	\$0.00	\$0.00
5	0240031020	VISIONPRO 26" LED DISPLAY	3	3	\$94.40	\$283.20
6	0240031000	SYNK VISIONPRO 26" WIRELESS LED DISPLAY	3	3	\$94.40	\$283.20
7	0240080230	PKG, SDP1000 DIGITAL COLOR PRINTER	3	3	\$37.76	\$113.28
Monthly Sell Price						\$2,899.99