

## **PROCARE ALS 360 AGREEMENT**

This document sets forth the entire Product Service Plan Agreement ("Agreement") between Stryker Sales, LLC, through its Medical Division, hereinafter referred to as "Stryker", and the Organization, Institution, Facility or Municipality named on the face of the ProCare Proposal, hereinafter, referred to as the "Customer". This is the entire Agreement and no other oral modifications are valid. This Agreement shall be coterminous with the ALS Master Agreement by and between the parties. Stryker accepts Customer's order expressly conditioned on Customer's assent to the terms set forth in this document. Customer's order and acceptance of any portion of the services shall confirm Customer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. No waiver, alteration, or modification of the terms and conditions set forth herein shall be binding unless Stryker expressly agrees in writing. Stryker expressly rejects any different, additional or conflicting terms or conditions set forth in Customer's purchase order or any other document issued by Customer; the terms of the invoice and these terms and conditions shall exclusively govern the purchase of Services from Stryker.

**1. SERVICE COVERAGE AND TERM.** Stryker shall provide to Customer the ProCare Program(s) services (the "Services") as defined on Exhibit A to the ALS Master Agreement (hereinafter each, a "Service Plan"). The equipment covered under said Service Plan is set forth on the Equipment Schedule attached to the ALS Master Agreement (the "Equipment"). The Services and the Service Plan(s) are ancillary to and not a complete substitute for the requirements of Customer to adhere to the routine maintenance instructions provided by Stryker, its equipment and operations manuals, and accompanying labels and/or inserts for the Equipment. Customer covenants and agrees that its personnel will follow the instructions and contents of those manuals, labels, and inserts. When Equipment or a component is replaced, the item provided in replacement will be the Customer's property (if Customer owns the Equipment) and the replaced item will be Stryker's property. This Agreement shall be coterminous with the ALS Agreement by and between Stryker and Customer. Notwithstanding the termination of this Agreement, any liability or obligation of either party which may have accrued prior to such termination shall continue in full force and effect.

**2. CONFIDENTIALITY INFORMATION.** Customer shall hold in strictest confidence any confidential or proprietary information that is related to the Services ("Confidential Information"). Customer hereby covenants that it shall not disclose such Confidential Information to any third party without prior written authorization of Stryker. Except as required by applicable law, Customer will not disclose to any third party, the terms of the Services or any other information, including any pricing or discounts, provided by Stryker to Customer in connection with this Agreement, without Stryker's prior written approval.

**3. INDEPENDENT CONTRACTOR.** The Customer and Stryker mutually understand and agree that Stryker shall always be acting and performing as an independent contractor. Nothing in this Agreement is intended to create an employer/employee relationship or a joint venture relationship between the parties.

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

**5. LIMITATION OF LIABILITY.** EXCEPT FOR THIRD PARTY DAMAGES RELATED TO STRYKER'S INDEMNITY OBLIGATIONS UNDER SECTION 4, STRYKER'S LIABILITY ARISING UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID UNDER THE SERVICE PLAN DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. IN NO INSTANCE WILL STRYKER BE

LIABLE TO CUSTOMER FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO THIS AGREEMENT.

**6. SERVICE LIMITATIONS.** Stryker represents and warrants that the Services shall be performed in a workmanlike manner and with professional diligence and skill. Services will comply with all applicable laws and regulations. During the term of the Service Plan, Stryker will maintain the Equipment in good working condition. Notwithstanding any other provision of this Agreement, the Services do not include repairs or other services made necessary by or related to, the following: (1) abnormal wear or damage caused by misuse or by failure to perform normal and routine maintenance as set out in the Stryker maintenance manual or operating instructions, (2) accidents, (3) catastrophe, (4) acts of god, (5) any malfunction resulting from faulty maintenance, improper repair, damage and/or alteration by non-Stryker authorized personnel, (6) Equipment on which any original serial numbers or other identification marks have been removed or destroyed, or (7) Equipment that has been repaired with any unauthorized or non-Stryker components. In addition, in order to ensure safe operation of the Equipment, only Stryker accessories should be used. Stryker reserves the right to invalidate the Services if Equipment is used with accessories not manufactured by Stryker. TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES APPLICABLE TO THE SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY BY STRYKER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

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

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

**9. EQUIPMENT CHANGES.** During the term of the Agreement and upon each party's written consent, changes to the Equipment may be made. All changes are subject to the terms and conditions contained herein. Stryker shall adjust the charges and modify the ALS Master Agreement to reflect the changes.

**10. EXPECTED SERVICE LIFE.** THIS AGREEMENT MAY INCLUDE PRODUCTS WHICH ARE BEYOND THEIR WARRANTY PERIOD AND TESTED EXPECTED SERVICE LIFE. ANY SUCH PRODUCT WILL BE INSPECTED SOLELY TO DETERMINE IF THE PRODUCT MEETS THE OPERATIONS AND MAINTENANCE MANUAL GUIDELINES FOR THAT PARTICULAR PRODUCT AS OF THE DATE OF INSPECTION. DESPITE ANY SUCH INSPECTION, STRYKER MAKES NO CLAIMS OR ASSURANCES AS TO FUTURE PERFORMANCE, INCLUDING NO EXPRESS OR IMPLIED WARRANTY, FOR ANY PRODUCT WHICH WAS INSPECTED OUTSIDE OF ITS WARRANTY PERIOD OR BEYOND ITS TESTED EXPECTED SERVICE LIFE.

**11. WAIVER EXCLUSION.** No failure to exercise and no delay by Stryker in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of any breach of any provision by Stryker shall be deemed to be a waiver by Stryker of any preceding or succeeding breach of the same or any other provision. No

extension of time by Stryker for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of time for performances of any other obligations or any other acts by Stryker.

**12. INSURANCE.** Stryker shall maintain the following insurance coverage during the term of the Agreement: (i) commercial general liability insurance, including products and completed operations liability coverage, with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate covering Stryker's liability for bodily injury, personal injury, and property damage; (ii) commercial automobile liability insurance with a combined single limit of \$1,000,000.00 per accident covering Stryker's liability for bodily injury and property damage arising out of Stryker's use of owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance as required by applicable law and employer's liability insurance subject to limits of \$1,000,000 per accident and \$1,000,000 per employee and policy limit for disease covering Stryker's liability for work-related injuries to all Stryker employees. 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. Notwithstanding any requirements hereunder to the contrary, to the extent permitted by applicable laws and regulations, Stryker shall be permitted to meet the above requirements through a program of self-insurance.

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

**14. COMPLIANCE REQUIREMENTS.** Stryker, as supplier/servicer, hereby informs Customer of Customer's obligation to make all reports and disclosures required by law or contract, including without limitation properly reporting and appropriately reflecting actual prices paid for each item supplied hereunder net of any discount (including rebates and credits, if any) applicable to such item on Customer's Medicare cost reports, and as otherwise required under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)). Pricing under this Agreement may constitute discounts on the purchase of Services. Customer represents that (i) it shall make all required cost reports, and (ii) it has the corporate power and authority to make or cause such cost reports to be made. To the extent required by law, Customer and Stryker agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96Z499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to the activities of Stryker hereunder, Stryker further specifically agrees that until the expiration of four (4) years after furnishing Services pursuant to this Agreement, Stryker shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Stryker that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Stryker further agrees that if Stryker carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. In performance of this Agreement, Stryker shall also comply with all applicable state and federal regulations, including but not limited to discrimination laws.

**15. HIPAA; DATA.**

**(a)** Stryker is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA (the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and

160-164, as amended). All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived incidentally during the course of this Agreement, shall be treated by both parties as confidential, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws.

**(b)** Customer acknowledges and agrees that Stryker may use any data arising from or related to the performance or use of the Equipment or Services.

**16. DEFAULT.** Customer is in default under this Agreement if it: a) fails to pay any amounts due under the ALS Master Agreement; or b) breaches any other material obligation under this Agreement; or c) ceases to do business, becomes insolvent, becomes bankrupt, merges, or is sold. Upon Customer default, Stryker may terminate this Agreement and declare the entire balance of unpaid monthly payments for the full Term (and any renewal term, if applicable) immediately due and payable, with interest at the highest rate allowed by law from the date of default until paid. Upon default, Customer will also pay all expenses (including, but not limited to, reasonable attorneys' fees, legal costs, cost of storage and shipping incurred by Supplier) in the enforcement and attempted enforcement of any remedies under this Agreement.

**17. NO ASSIGNMENT.** This Agreement may not be assigned by either party without the written consent of the other party.

**18. SEVERABILITY.** Stryker agrees that if one or more provisions of this Agreement are held to be unenforceable under applicable law, such provisions shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**19. BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon, the parties and their respective successors and permitted assigns.

**20. AMENDMENT.** This Agreement may not be amended except by mutual written Agreement of the parties.

**21. NOTICES.** All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given or made if delivered by hand, in which case notice will be deemed effective upon receipt, or, if by mail by certified or registered mail, with postage prepaid to the address of such party set forth in the introductory paragraph of this Agreement or to such address directed by a party in writing, in which case notice will be deemed effective upon mailing. The return receipt, the delivery receipt, or the affidavit of messenger will be deemed conclusive but not exclusive evidence of delivery; delivery will also be presumed at such time as delivery is refused by the addressee upon presentation.

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