



Stryker Sales, LLC, through its Medical Division
P.O. Box 93308
Chicago, IL 60673-3308

Date: **8.3.2022**

Corpus Christi Fire Department,

Thank you for choosing Stryker for your equipment needs. Enclosed please find the documents necessary to enter into the arrangement. Once all of the documents are completed, properly executed and returned to us, we will issue an order for the equipment.

PLEASE COMPLETE ALL ENCLOSED DOCUMENTS TO EXPEDITE THE SHIPMENT OF YOUR ORDER.

Product Purchase and Technology Refresh Agreement

Schedule A – Products and Pricing

State and Local Government Rider

Opinion of Counsel

****Conditions of Approval: State and Local Government Rider, Federal ID, Opinion of Counsel**

PLEASE PROVIDE THE FOLLOWING WITH THE COMPLETED DOCUMENTS:

Federal tax ID number:
Purchase order number:
Phone number:

AP address:
Contact name:
Email address:

Please e-mail completed documents to Tim Garza at Tim.Garza@stryker.com . Return original documents to Stryker Emergency Care, Attention Contracts Manager, 11811 Willows Rd. NE, Redmond, WA 98052 (using Fed-Ex Shipping ID# 612-309469)

Sincerely,

Stryker Sales, LLC

Schedule A attached hereto and made part hereof (the “**Original Products**”). Stryker and Customer are referred to individually as a “**Party**” and collectively as the “**Parties**.”

Date of Agreement and Term:	The term of this Agreement shall commence the latter of 8.3.2022 (the “ Effective Date ”) or within five (5) business days after Stryker’s receipt of a signed original Agreement, and shall terminate five (5) years thereafter
Signatures: By executing this Agreement, each signatory represents and warrants that such signatory has read the Terms and Conditions, which are set forth below and are part of this Agreement, and that such person is duly authorized to execute this Agreement.	
STRYKER SALES, LLC:	CUSTOMER:
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Address: _____	Address: _____

TERMS AND CONDITIONS

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Product Pricing.** The purpose of this Agreement is to allow Customer access to Products at discounted pricing, based on Customer’s agreement to purchase the Products and Services listed in Schedule A. Original Products provided to or for the benefit of Customer under this Agreement will be provided on the terms set forth at www.strykeremergencycare.com/terms. The pricing of the Products is set forth on Schedule A attached hereto.

2. **Upgrade Option.** Provided no default or event of default has occurred and is continuing under this Agreement, at any time between the thirty-sixth (36th) through the sixtieth (60th) month of the Term, Customer shall have the option to upgrade (the “Upgrade Option”) any or all of the Original Products purchased pursuant to this Agreement in the event Stryker releases for sale in the United States a new product model (“New Product”) that replaces some or all of the Original Products purchased pursuant to this Agreement. This option can be exercised by Customer one time during the Term for each Original Product listed on Exhibit A. The New Product must have substantially the same functionality and specification and be of equal or greater value as the related item of the Original Products, all as reasonably determined by Stryker. If, Customer elects to exercise the Upgrade Option, Customer shall notify Stryker of such election, in writing, and include in such notice a description, including serial numbers, of the Original Products. Immediately upon Customer’s receipt of the New Product, Customer shall return the Original Products to Stryker at Customer’s expense and in the condition and otherwise provided for as required under this Agreement. If Customer exercises the Upgrade Option, Customer shall no longer have the Like-Kind Exchange Option.

3. **Like-Kind Exchange Option.** If at the sixtieth (60th) month of the Term Stryker has not released New Product, Customer shall have the option to exchange (the “Like-Kind Exchange Option”) the Original Products for products of the same make and model (the “Like-Kind Products,” and collectively with

Original Products and New Products as “Products”) as the Original Products. If, Customer elects to exercise the Like-Kind Exchange Option, Customer shall notify Stryker of such election, in writing, and include in such notice a description, including serial numbers, of the Original Products. Immediately upon Customer’s receipt of the Like-Kind Products, Customer shall return the Original Products to Stryker at Customer’s expense and in the condition and otherwise provided for as required under this Schedule. If Customer exercises the Like-Kind Exchange Option, Customer shall no longer have the Upgrade Option.

4. **Risk of Loss.** Effective upon delivery to Customer and continuing until the Original Products are returned to Stryker in accordance with the terms set forth herein, Customer shall bear all risks of loss or damage to the Original Products and if any loss occurs Customer is nevertheless required to satisfy all of its obligations set forth herein.

5. **Payments.** The entire payment for goods and services provided herein is due thirty (30) days from the invoice date.

6. **Products.** All Original Products shall be used solely for business purposes, and not for personal or household use. Customer shall maintain the Original Products in good repair in accordance with the instructions of the Original Product’s manufacturer, so that it shall be able to operate in accordance with the manufacturer’s specifications. Customer shall keep the Original Products free of liens, claims and encumbrances, and shall not modify, move, sell, transfer, or otherwise encumber any Original Product or permit any Original Product to be used by others or become attached to any realty, in each case without the prior written consent of Stryker, which consent shall not be unreasonably withheld. Any modification or addition to any Original Product shall automatically become the sole property of Stryker. Stryker shall have the right to enter Customer’s premises during business hours to inspect any Original Product and observe

its use upon at least one (1) day's prior written or verbal notice. Customer shall comply with all applicable laws, rules and regulations concerning the operation, ownership, use and/or possession of the Original Products.

7. Insurance/Indemnification. Customer shall at all times maintain and provide Stryker with certificates of insurance evidencing (i) third-party general liability insurance (covering death and personal injury and damage to third party property) with a minimum limit of \$1 million combined single limit per occurrence and (ii) property insurance covering the Original Products against fire, theft, and other loss, damage or casualty for the full replacement value of the Original Products in each case with insurers acceptable to Stryker. Such policies shall list Stryker as an additional insured and sole loss payee, as applicable, for such insurance. Such insurance policies shall require the insurer to provide Stryker with at least 30 days' prior written notice of any material change in or cancellation of the insurance. In the event that Stryker determines that the insurance is not in effect, Stryker may (but shall not be required to) obtain such insurance and charge Customer an insurance fee (which may include a profit). Upon any loss or damage to any Original Product, Customer shall, at Stryker's sole election, either repair such Original Product or replace it with comparable equipment satisfactory to Stryker. Proceeds of insurance shall be paid to Stryker with respect to any Original Product loss, damage, theft or other casualty and shall, at the election of Stryker, be applied either to the repair of the Original Product by payment by Stryker directly to the party completing the repairs, or to the reimbursement of Customer for the cost of such repairs; provided, however, that Stryker shall have no obligation to make such payment or any part thereof until receipt of such evidence as Stryker shall deem satisfactory that such repairs have been completed and further provided that Stryker may apply such proceeds to any sum due or to become due hereunder if at the time such proceeds are received by Stryker there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default. To the extent not expressly prohibited by applicable law, Customer will reimburse and defend Stryker for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by Stryker relating to the Original Products and which relate to or arise out of Customer's act or omission or the act or omission of Customer's agents or employees or others (excluding Stryker) with access to the Original Products. All Taxes and indemnity obligations shall survive the termination, cancellation or expiration of this Agreement. Stryker acknowledges that Customer is a self-insured political subdivision of the State of Texas and that Customer has provided to Stryker a letter detailing the types and limits of the Customer's coverages, which letter's content is acceptable to Stryker in lieu of the insurance provisions, as stated in this paragraph, for the term of this Agreement.

8. Confidentiality. The parties acknowledge that the Customer is a Texas governmental entity subject to the Texas Public Information Act (the "Act"). Should Customer receive a request for disclosure of Confidential Information pursuant to the Act, Customer will promptly provide Stryker notice of such request in accordance with Section 552.305 of the Texas Government Code so that Stryker may avail itself of any opportunities to establish reasons why the information should be withheld prior to disclosing such Confidential Information. The burden of establishing the applicability of exceptions to disclosure of Confidential Information under the Act resides with Stryker. Should Stryker be unable to establish a valid exception from disclosure or exclusion from the Act or protective order, then Customer may release the information, solely to the extent necessary to comply with the Act.

9. Default and remedies. Customer will be in "default" of this Agreement if any one or more of the following shall occur: (a) Customer breaches any term of this Agreement or the terms set forth at www.strykeremergencycare.com/terms or <https://www.strykeremergencycare.com/software-hosting/>, or (b) Customer makes any misrepresentation to Stryker, or (c) Customer shall consent to the appointment of a receiver, trustee or liquidator of itself or a substantial part of its assets, or (d) there shall be filed by or against Customer a petition in bankruptcy, or (e) Customer's articles of incorporation or other formation documents shall be amended to change Customer's name and Customer fails to give Stryker written notice of such change (including a copy of any such amendment) on or before the date such amendment becomes effective, or (f) Customer's legal existence in its state of incorporation or formation shall have lapsed or terminated, or (g) Customer shall dissolve, sell, transfer or otherwise dispose of all or substantially all of its assets, without Stryker's prior written consent, which consent shall not be unreasonably withheld, or (h) without prior written consent of Stryker, which consent shall not be unreasonably withheld, Customer merges or consolidates with any other entity and Customer is not the survivor of such merger or consolidation. Upon default, Stryker may do any one or more of the following: (1) recover from Customer Stryker's related reasonable attorneys' fees, collection costs and expenses; (2) enter upon Customer's premises and take possession of any or all of the Original Products; (3) terminate this Agreement; and/or (4) utilize any other right or remedy provided by applicable law. In the event the Original Products are returned or repossessed by Stryker, Stryker will, if commercially reasonable, sell or otherwise dispose of the Original Products, with notice as required by law, and apply the net proceeds after deducting the costs and expenses of such sale or other disposition, to Customer's obligations hereunder (if any are outstanding) with Customer remaining liable for any deficiency and with any excess being retained by Stryker or applied as required by law. If Customer fails to perform or comply with any of its agreements or obligations, Stryker may perform or comply with such agreements or obligations in its own name or in Customer's name as attorney-in-fact and the amount of any

payments and expenses of Stryker incurred in connection with such performance or compliance, together with interest thereon (at a rate per annum equal to the lower of 1-1/2% per month or the highest rate of interest permitted by applicable law), shall be payable by Customer to Stryker upon demand.

10. Termination. This Agreement may be terminated by either Party upon 60 days' prior written notice to the other Party. Upon termination of this Agreement Customer shall pay Stryker for any and all Products shipped but not yet paid for as of the date of termination, at the applicable prices. All accrued rights and responsibilities will survive termination or expiration of this Agreement. Early termination will forfeit the Upgrade Option and Like-Kind Exchange Option set forth above.

11. Funding. The continuation of this Agreement after the close of any fiscal year of the Customer, which fiscal year ends on September 30th annually, is subject to budget approval and appropriations specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the Customer's City Council to determine whether or not to fund this Agreement. The Customer does not represent that a budget item providing for this Agreement will be adopted, as that determination is within the City Council's sole discretion when adopting the budget.

12. Amendment/Entire Agreement. This Agreement together with the terms set forth at www.strykeremergencycare.com/terms and at <https://www.strykeremergencycare.com/software-hosting/> constitute the entire agreement of the Parties regarding their subject matter. This Agreement may only be amended by a written document signed by both Parties. This Agreement supersedes all previous negotiations, commitments, and writings with respect to their subject matter. In the event of a conflict between this Agreement and terms set forth at www.strykeremergencycare.com/terms or the terms set forth at <https://www.strykeremergencycare.com/software-hosting/>, this Agreement will control.

13. Assignment. This Agreement and the rights, duties and responsibilities of the parties shall not be assigned to a third party without the prior express written consent of the other, except that Stryker may assign this Agreement without such consent to any person, firm or corporation succeeding to its business and also to any parent, subsidiary or affiliated company of Stryker.

14. Limitation of Liability. Neither party shall be liable to the other party for special, punitive, incidental, consequential or indirect damages in connection with this Agreement or performance hereunder.

15. Non-waiver. The failure by one party to act or to require performance of any provision of this Agreement shall not affect that party's right to take such action or to require such performance at any time thereafter. A waiver of any breach or

default of this Agreement shall not constitute a waiver of any subsequent breach or default.

16. Execution and Counterparts. This Agreement may be executed and delivered in multiple counterparts, including Adobe Acrobat or ".pdf" format, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.

17. Notices. All notices required or provided for herein, shall be in writing and shall be addressed to Customer or Stryker, as the case may be, at its address set forth above or such other address as either such party may later designate in writing to the other party. Such notice shall be considered delivered and effective: (a) upon receipt, if delivered by hand or overnight courier, or (b) three (3) days after deposit with the U.S. Postal Service, if sent certified mail, return receipt requested with postage prepaid. No other means of delivery of notices shall be permitted.

18. Miscellaneous. This Agreement shall be governed by the laws of Texas, without regard to its principles of conflict of laws or choice of law. **THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE ORIGINAL PRODUCTS.** Information about Customer may be used for marketing and administrative purposes and shared with Stryker's affiliates. Customer may direct Stryker not to share that information (except transaction and experience information and information needed for credit approval) with Stryker's affiliates by writing to Stryker's address referenced above. This Agreement will not be valid until accepted by Stryker (as evidenced by Stryker's signature below). Customer represents and warrants to Stryker, that effective on the date on which Customer executes this Agreement: (i) if Customer is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Agreement and the performance of Customer's obligations hereunder have been duly authorized by all necessary action on the part of the Customer; (ii) the person signing this Agreement on behalf of Customer is duly authorized; (iii) all information provided by Customer to Owner in connection with this Agreement is true and correct; and (iv) this Agreement constitutes legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms. Any provision of this Agreement, which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of the Agreement, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Customer has not received any tax or accounting advice from Stryker.

SCHEDULE A

1. Products and Pricing:

Equipment			
LP15 Equipment			
Model Number	Equipment Description	Qty.	
90577-001373	LP15_EN,SPO2COMET,3L/12L,EX,NI	17	
41577-000290	SHIP KIT	17	
11171-000052	RC-4, EMS, RAINBOW, PATIENT	17	
11160-000011	NIBP CUFF-REUSEABLE, INFANT, BA	17	
11160-000013	NIBP CUFF-REUSEABLE, CHILD, BAY	17	
11160-000015	NIBP CUFF-REUSEABLE, ADULT, BAY	17	
11100-000017	NIBP CUFF-REUSEABLE, LARGE ADUL	17	
11160-000019	NIBP CUFF-REUSEABLE, X-LARGE A	17	
11577-000002	KIT - CARRY BAG, MAIN BAG	17	
11220-000028	TOP POUCH	17	
11260-000030	KIT - CARRY BAG, REAR POUCH, B	17	
11577-000004	LI-ION CHARGER, STATION, STD P.	17	
11171-000049	RAINBOW DCI ADT REUSABLE SENSOR	17	
21500-008139	NIBP - TUBING, 6FT, BAYONET,	17	
11996-000359	TEMP SENSOR, SKIN PROBE, HIGH DI	17	
11996-000360	TEMP SENSOR, ESOPHAGEAL-RECTAL,	17	
21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	68	
	Subtotal LP15 equipment		\$1,297,700
	Zoll Trade In	17	(\$136,000)
Total Equipment:			\$1,161,700

ProCare Service/Data			
Model Number	Service Description	Qty.	
11996-000474	ASSEMBLY, GATEWAY, 4G, MULTITE	17	
11600-000030	CODE-STAT 11 DATA REVIEW SEAT LICENSE	1	
78000172	CODE-STAT Maint Subscrip 3 yrs	1	
78000171	Lifenet Asset (Per Device)	17	
78000008	*On site Prevent for LIFEPAK 15 v4 Monitor/Defib - SpCO, NIBP, 12-Lead ECG, EtCO2, BT.*	17	
	Subtotal service/data coverage		\$185,200
Total Service/Data Coverage:			\$183,200
Total Amounts:			\$1,344,900

Pricing will not be disclosed without the express written consent of Stryker.

State and Local Government Customer Rider

This State and Local Government Customer Rider (the "Rider") is an addition to and hereby made a part of the AGREEMENT between Stryker Sales, LLC ("Stryker") and **Corpus Christi Fire Department** ("Customer") to be executed simultaneously herewith and to which this Rider is attached. Capitalized terms used but not defined in this Rider shall have the respective meanings provided in the Agreement. Stryker and Customer agree as follows:

1. Customer represents and warrants to Stryker that as of the date of, and throughout the Term of, the Agreement: (a) Customer is a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) The person(s) signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) The Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) The Products are essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Stryker that, as of the date each item of the Products becomes subject to the Agreement, it has funds available to pay all Agreement payments payable thereunder until the end of Customer's then current fiscal year, and, in this regard and upon Stryker's request, Customer shall deliver in a form acceptable to Stryker a resolution enacted by Customer's governing body, authorizing the appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.

2. Any provisions in this Rider that are in conflict with any applicable statute, law or rule shall be deemed omitted, modified or altered to the extent required to conform thereto, but the remaining provisions hereof shall remain enforceable as written.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Stryker Sales, LLC	
Signature:	Date:
Print name:	
Title:	

Opinion of Counsel Letter

September 1, 2022

Stryker Sales, LLC, through its Medical Division
P.O. Box 93308
Chicago, IL 60673-3308

Gentlemen/Ladies:

Reference is made to the AGREEMENT between Stryker Sales, LLC, and the City of Corpus Christi (herein called "Customer") for the purchase of certain equipment, goods and/or services as described in the Agreement. Unless otherwise defined herein, terms which are defined or defined by reference in the Agreement, or any exhibit or schedule thereto shall have the same meaning when used herein as such terms have therein.

The undersigned is Counsel for the Customer in connection with the negotiation, execution and delivery of the Agreement, and as such I am able to render a legal opinion as follows:

1. The Customer is a public body corporate and politic of the State of Texas and is authorized by the Constitution and laws of the State of Texas to enter into the transactions contemplated by the Agreement and to carry out its obligations thereunder. The Customer's name set forth above is the full, true, and correct legal name of the Customer.
2. The Agreement set forth above has been duly authorized, executed and delivered by the Customer and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.
3. No further approval, consent or withholding of objections is required from any federal, state or local governmental authority and the Customer complied with all open meeting and public bidding laws with respect to the entering into or performance by the Customer of the Agreement and the transactions contemplated thereby.

Very truly yours,

Signature	
Signature:	Date:
Print Name:	
Title:	