

Alachua County Board of County Commissioners
Purchase/Blanket Order Standard Terms and Conditions
For: Stryker Sales, LLC, through its Medical Division (Nov 2023)

The following Terms and Conditions are applicable and are incorporated to, a Purchase Orders (“PO” or “Orders”) issued or entered into by Alachua County, a charter county and political subdivision of the State of Florida (“County” or “Buyer”) and Stryker Sales, LLC, through its Medical Division (“Vendor”). By accepting a PO, the County and Vendor agree to the following Terms and Conditions, together with Vendor’s Standard Terms of Sale (US) and ProCare Terms and Conditions attached as Exhibit A hereto (the “Vendor Terms”):

1. **PURCHASE ORDER:** The Alachua County Code defines a purchase order as that document to a vendor formalizing all of the terms and conditions for a specified need, and may include, but not be limited to, the technical description of the requested item, scope, price, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and other information supplied. A PO number will be assigned by the County and the PO number must appear on packages, invoices and correspondence related to the Order.
2. **INSPECTION:** County and its employees shall have the right to inspect all goods delivered from and services provided by Vendor under the PO upon receipt or completion. County shall have the right to reject non-conforming goods/services and may require the Vendor to correct any deficiency or error. At County’s option, and at Vendor’s risk and expense, County may return goods/services to Vendor that are rejected or that require correction, or County may hold, at Vendor’s expense, such goods to wait for Vendor’s instruction. Vendor assumes all risk of loss of or damage relating to any goods or work rejected by County until the same are received by Vendor or accepted by County. County’s payment to Vendor for any goods/services prior to inspection shall not constitute County’s acceptance.
3. **ACCEPTANCE:** County and Vendor agree that by Vendor submitting an offer which is accepted by County (i.e. PO) a binding contract is formed in accordance with the PO, the Offer, these Terms and Conditions, the Vendor Terms, and the specifications set forth in any applicable solicitation by the County or its agent for the goods/services. In the event of any conflict or inconsistency between these Terms and Conditions and the Vendor Terms, these Terms and Conditions shall be controlling. Vendor certifies that the offer was made the Vendor’s officer, employee or agent having authority to bind the Vendor Vendor’s delivery of goods/services or Vendor’s commencement of performance constitutes Vendor’s acceptance of this Order and all the terms and conditions contained herein. Vendor’s delivery of goods constitutes a waiver of any communication made by Vendor that conflicts with these Terms and Conditions. County’s silence or acceptance of any goods/services delivered shall not constitute County’s acceptance of any communication made by Vendor which is different or conflicts with the Order, including these Terms and Conditions. Vendor’s electronic acceptance of the Order shall have the same legal effect and enforceability as a paper version.
4. **DELIVERY:** Vendor shall plainly mark delivered materials or services with County’s name and address, and PO number, which should be on the front of the Order. The vendor shall deliver goods F.O.B. to the "Ship To" address on the PO, unless County states otherwise. Vendor will notify County of any anticipated delay in delivery. An anticipated delay is delivery that extends beyond an ‘agreed to’ delivery date between the County and Vendor or one that is beyond the usual timing of delivery which Vendor has performed in the past and which County has traditionally accepted as sufficient timing of delivery from Vendor. Upon notification of anticipated delay in delivery by Vendor, County may change extension in delivery or may terminate the Order in accordance with paragraph 5 below.
5. **SUBSTITUTIONS & CHANGES:** No substitutions, changes, or price increases related to or for this Order, including to these Terms and Conditions, shall all be binding on the unless approved in writing by the County Manager or the Alachua County Procurement Manager. These Terms and Conditions and the provisions of the PO supersede all prior written or oral agreements, understandings, or representations between the Vendor and County for the goods or services listed in the Order. Purchase orders may be amended by change orders.

6. **COMPLIANCE WITH LAWS AND REGULATIONS:** Vendor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the production, sale and delivery of the goods/services to County. Any provisions required by federal, state, or local law, regulation or ordinance shall be incorporated herein by reference. Vendor acknowledges and agrees that Vendor has and will maintain all governmental permits, licenses, consents, and approvals necessary to perform its obligations for the Order. In accordance with Chapter 442, Florida Statutes, Vendor shall furnish County with a current material safety data sheet (MSDS) on or before delivery of each and every toxic substance. The county is tax-exempt and therefore is not obligated to pay sales, use, and excise taxes. A copy of the **County's** certification of exemption can be made available, upon request.
7. **E-VERIFY:** The Vendor shall utilize the U.S. Department of Homeland **Security's** E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of this PO. Vendor shall expressly require any subcontractors performing work/services under this PO to utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor. The E-Verify system is located at <https://www.e-verify.gov/>. Vendor affirms and represents that it is registered with the E-Verify system and are using same, and will continue to use same as required by Section 448.095, Fla. Stat.
8. **PUBLIC ENTITY CRIMES:** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, Section 287.017 for Category Two for a period of thirty-six months from the date of being placed on the convicted vendor list.
9. **INSURANCE:** Vendor shall maintain insurance in full force and in effect throughout the term of this Order. County reserves the right to terminate the Order if Vendor fails to supply and/or maintain the required coverage.
10. **COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY COVERAGES:**
- Commercial general liability coverage, including coverage for products and completed operations liability, with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - Commercial automobile liability insurance with combined single limits of \$1,000,000 per accident for owned, hired, and non-owned vehicles;
 - Worker's compensation insurance covering all employees** 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.
 - The Alachua County Board of County Commissioners, its officials, employees, and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of the Contractor/Vendor; to include Products and/or Completed Operations of the Contractor/Vendor; Automobiles owned, leased, hired, or borrowed by the Contractor.
 - Except with respect to any claim or loss that arises from the negligence or willful misconduct of County, its employees or agents, the **Contractor's insurance coverage shall be considered primary** insurance as respects the County, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officials, employees, or volunteers shall be excess of **Contractor/Vendor's insurance and shall be non-contributory.**

All Coverages:

The Contractor/Vendor shall provide a Certificate of Insurance to the County with a notice of cancellation. The certificate shall indicate if cover is provided under a **"claims made"** or **"per occurrence" form**. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contact is renewed) or prior.

Notwithstanding any other insurance requirements hereunder to the contrary, to the extent permitted by applicable laws and regulations, Vendor shall be permitted to meet the requirements under this Contract

through a program of self-insurance.

Subcontractors:

The Contractor/Vendor shall be responsible for all subcontractors working on their behalf as a condition of this agreement. All subcontractors of the Contractor/Vendor shall be subject to the same coverage requirements stated herein.

11. **WARRANTY: During the term of the Service Plan (the “Term”), Vendor warrants, with the exception of software maintenance services which, if applicable, will be as specified in the Service Plan, the following:**
- a. Vendor has the experience, capability and resources to perform under the Service Plan, and Vendor further represents and warrants that the Services will be performed in a workmanlike manner and with professional diligence and skill;
 - b. 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;
 - c. **If the Services are to be performed on the County’s premises, Vendor represents and warrants that Vendor will comply with all applicable safety laws and the County’s then current safety** and other applicable regulations, all human resource policies and health and drug and alcohol screening policies; provided that the County has provided advance written notification of such rules, regulations and policies to Vendor;
 - d. Vendor 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.
 - e. Vendor 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 County’s property and the replaced item will be Vendor’s property. If a refund is provided by Vendor, the Equipment for which the refund is provided must be returned to Vendor and will become Vendor’s property.**
 - f. **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 VENDOR, AND VENDOR 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 VENDOR BE LIABLE TO THE COUNTY FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR ATTORNEYS’ FEES OR COSTS.**
12. **WARRANTY - PRICE:** Vendor warrants that County shall not be billed at prices higher than stated on this Order, unless agreed to by an authorized representative of the County in writing. Vendor shall apply to this Order any price reduction applicable to goods/services ordered subsequent to the placement of this Order.
13. **FORCE MAJEURE:** Vendor hereby agrees to on-time delivery based upon the timeline set forth in the Order. If the PO does not specify a delivery date or timeline, Vendor shall provide the good/service as if time is of the essence. The County and Vendor will exercise every reasonable effort to meet their respective duties for this Order, but neither will be liable for delays resulting from causes beyond their reasonable control, such as (but not limited to) hurricane, flood, fires, strikes, national disasters, wars, riots, or acts of God. If Vendor anticipates a delay in the delivery of goods, Vendor shall promptly notify the County. Changes or delays due to the acts of the County that prevent Vendor from achieving the delivery date or timeline do not constitute a breach by the Vendor. Any such cause will reasonably extend the performance of the delayed duty as agreed by the parties.

14. **INDEMNIFICATION:**

- a. **Vendor will indemnify and defend the County against any third party liability and/or damages (“Claims”) that the County 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 Vendor 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 Vendor employee or agent; (ii) the failure of any person other than a Vendor 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 Vendor; (iv) abnormal wear and tear or damage caused by misuse or by the County’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 Vendor representative; or (v) any equipment or any part thereof that has been modified, altered or repaired by any person other than Vendor’s employee or agent.**
- b. **Vendor’s indemnification obligations under this Section 14 are conditioned on the County promptly providing Vendor 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 Vendor 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 the County without the County’s prior written consent (which will not be unreasonably withheld).**

15. **COPYRIGHTS:** Vendor retains all rights, including copyright and trademark rights, for any custom art, writing or design produced under the PO. Any deliverables created by Vendor or conveyed to County as a direct result of this Order will, upon completion, unless specifically agreed to prior to acceptance including, but not limited to, any custom art, design, or writing produced, or any custom die, mold, photomechanical or digital masters or other such item used in the performance of this Order.

16. **TERMINATION:** Upon no less than thirty (30) days prior written notice, the County may terminate this Order, in whole or in part, for convenience at any time and for any reason with no further obligation on the County except to pay to Vendor an amount sufficient to pay for the services from this Order received by County after the Order was issued until on or before the effective date of termination of the Order by County. County may terminate this Order at any time if Vendor fails to provide the goods, or perform any of the provisions of the Order, or otherwise breaches these Terms and Conditions, and such failure or breach shall remain uncured thirty (30) days after the County has provided Vendor with written notice describing the nature of the failure or breach in reasonable detail. Alachua County Manager and his/her designee is authorized to provide notice of termination on behalf of the County. The effective date of termination of an Order will be the date specified in the notice of termination.

17. **GOVERNING LAW:** The Order is governed by the laws of the State of Florida and venue for any actions or proceedings arising in connection with the Order shall be in a court of competent jurisdiction in and for Alachua County, Florida.

18. **ASSIGNMENT:** Assignments are prohibited unless written consent is given by the County and the Vendor. Vendor may, however, assign all of its right, title and interest in this Agreement to any affiliate of **Vendor (Stryker), and the County’s consent to such assignment shall not be unreasonably withheld.**

19. **INDEPENDENT CONTRACTOR:** Vendor is acting in the capacity of an independent contractor and Vendor, nor its employees or agents, shall be considered as an agent, employee, partner, or associate of the County.

20. **INFORMATION SECURITY:** To the extent applicable to **Vendor’s** performance for this Order, Vendor shall maintain network security and will take reasonable measures to protect, secure and maintain the security of any County data held by the Vendor, in any form, and that any transmission or exchange of system application data with the County, shall take place via secure means. If Vendor suspects or becomes aware of security breach or unauthorized access to **County’s** exempt,

confidential, personal information, or protected information, as defined by Florida or federal law, Vendor shall notify the County **immediately and will work at Vendor's expense, to prevent or stop the breach.**

21. **PAYMENT:** A copy of Alachua County's Prompt Payment Procedures can be obtained by calling Alachua County Procurement Department at (352) 374-5202 or visiting <https://www.alachuacounty.us/Depts/Procurement/PurchasingDocs/promptpayment.pdf>. If County has reasonable cause to suspect that any representations of Vendor relating to payment are inaccurate, County may withhold payment of sums then or in the future otherwise due to Vendor until the inaccuracy, and the **cause thereof, is corrected to the Alachua County Manager's or his/her designee's satisfaction. The** County's performance and obligation to pay under this Order is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners. This Order is not a commitment of future appropriations.
22. **PAYMENT – AUDIT:** County is entitled to request copies of the books and records of Vendor to the extent that such copies of books and records relate to the specific performance of this Order and any resulting Agreement. Such books and records shall be maintained by the Vendor for a period of three years from the date of final payment and by the subcontractor for a period of three years from the date of final payment under a subcontract, unless a shorter period is otherwise authorized in writing by the County.
23. **PUBLIC RECORDS:** In accordance with §119.0701, Florida Statutes, Vendor, when acting on behalf of the County, shall, as required by Florida law:
- 1) Keep and maintain public records required by the County to perform the services.
 - 2) **Upon request from the County's custodian of public records, provide the County with a** copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida law or as otherwise provided by law.
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and following completion of the scope or purpose of the Order if Vendor does not transfer the records to the County.
 - 4) Upon completion of scope or purpose of the Order, transfer, at no cost, to the County all public records in possession of Vendor or keep and maintain public records required by the County to perform the services. If Vendor transfers all public records to the County upon completion of the goods/services, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the goods/services, Vendor shall meet all applicable requirements for retaining public records. All records **stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.**
- IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS ORDER, CONTACT THE COUNTY'S PUBLIC RECORDS CUSTODIAN AT publicrecordsrequest@alachuacounty.us OR (352) 264-6906 OR 12 SE 1ST STREET, GAINESVILLE, FL 32601.**
24. **OTHER ORDERS:** County and Vendor acknowledge that there is nothing between them or agreed to that precludes County from retaining same or similar goods or services listed in the Order from other vendors, contractors, professionals, and consultants or from independently supplying the goods or performing the services on its own; provided, that if the County performs such services on its own or retains any other party to perform such services, this may invalidate any remaining Vendor warranties on the applicable equipment.
25. **CONFLICTS: In the event of conflict between the quote, the Vendor's offer, the Vendor's Terms and Conditions, these Alachua County Terms and Conditions, the Order, and the B.O., these Alachua County Terms and Conditions prevail over all other documents, terms, and specifications. NOTICE:** Any notice to either the Vendor or the County must be in writing and signed by the party giving it and served to the

other party: 1) by hand; 2) through the United States Mail, postage prepaid, registered, or certified, return receipt requested; or 3) through package delivery service.

- 26. **ASSIGNMENT OF INTEREST:** The vendor and county recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the County. Therefore, the vendor hereby assigns to the county any and all claims for such overcharges as to goods, materials or services purchased in connection with the agreement. However, for all other assignments, neither party will assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this agreement and shall not transfer any interest in same without prior written consent of the other party.

The following are applicable to Blanket Purchase Orders:

- 27. **BLANKET AUTHORIZATION:** Blanket authorization is hereby granted to the said department for the purchase of said items and/or services during the period of October 1st or from this date issued, whichever is latest, through the expiration date on the Blanket PO or end of the current Fiscal Year whichever occurs first.
- 28. **DOLLAR THRESHOLDS:** The board would like to impress upon you the importance of strictly adhering to the dollar amounts on your blanket purchase order. The board will not be responsible for purchases in excess of that amount.
- 29. **FISCAL NON-FUNDING:** Effective only to the extent of appropriations, this blanket purchase order shall be deemed available to Alachua County at any time during the period indicated on the blanket purchase order.

See Vendor's Standard Terms of Sale (US) and ProCare Terms and Conditions attached as Exhibit A

STRYKER SALES, LLC, ACTING THROUGH ITS MEDICAL DIVISION		ALACHUA COUNTY, a charter county and political subdivision of the State of Florida	
ALACHUA COUNTY BOARD OF COMMISSIONERS			
By:	<i>Tom Tackabury</i>	By:	<i>Maya Aye</i>
Name:	Tom Tackabury	Name:	
Title:	Sr. Sales Manager, ProCare	Title:	
Date:	November 27, 2023	Date:	November , 2023 Dec 15, 2023


Approved as to Form

 Robert L. Swain
 Alachua County
 Attorney
274E045D4F99416

EXHIBIT A to PURCHASE/BLANKET ORDER**STANDARD TERMS OF SALE (US) and ProCare TERMS & CONDITIONS****CUSTOMER: ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS (Nov 2023)**

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 and allocate prices paid net of all 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. **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.
4. **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.
5. **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. **Appendix 1 Not Applicable to Current ProCare Services.**
6. **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. **Appendix 2 Not Applicable to Current ProCare Services.**
7. **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.
8. **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.

9. Warranties, Return Policies and Maintenance.

- 9.1. 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.**
- 9.2. 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.**
- 9.3. Products returned by Customer for credit, replacement and/or repair will be in accordance Stryker's applicable return policy.**
- 9.4. 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.**
- 9.5. 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.**
- 9.6. Customer agrees that Stryker may (if applicable to the products covered hereunder) monitor use of the Products, and services provided through the Products, by Customer and users and collect and use Stryker Data, including to compile information related to the provision, operation or use of a Product, facilitate the provision of support, consulting, training and other services, and verify compliance with the terms of this Agreement. Stryker may use and make publicly available, Stryker Data to the extent and in the manner permitted under applicable law. Stryker owns Stryker Data, and Customer grants Stryker a non-exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer's Content incorporated within the Stryker Data. "Stryker Data" means any data relating to or arising from the business operations or plans, services and products of Stryker or the performance or use of the Products or that may aid Stryker in optimizing resources and support; may be used to improve products or services, may be used in research and development regarding products or services; may be used in verification of security and data integrity of products or services or in resource planning, industry trends, benchmarking, or contract administration (e.g., data used for sales compensation), and any Personal Information that is aggregated and not identified or identifiable to any individual.**

10. Software License. Intentionally Omitted. Not Applicable to Current ProCare Services.

11. Insurance.

- 11.1. See Paragraph 10 – BOCC - Purchase Order Terms and Conditions for coverage limits.**
- 11.2. 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.**

12. 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.

- 13. 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.**
- 14. 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.
- 15. 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.
- 16. Miscellaneous.** These Standard Terms of Sale, **together with County's Purchase/Blanket Order Standard Terms and Conditions**, negotiated between the parties hereto, 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.
- 17. 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 - Intentionally Omitted. Not Applicable to Current ProCare Services.
APPENDIX 2 - Intentionally Omitted. Not Applicable to Current ProCare Services.

APPENDIX 3 - PROCARESM SERVICES – TERMS AND CONDITIONS

CUSTOMER: ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS (Nov 2023)

The terms of this Appendix 3, together with Alachua County Board of County Commissioner's Purchase/Blanket Order Standard Terms and Conditions, as negotiated between the **parties hereto**, 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") as outlined on Stryker's Quote # 10780432.**
- 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. 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. 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.

- 5. 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.
- 6. 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 polices may be removed from Customer's facility at Customer's option** and will be replaced by Stryker promptly.

- 7. **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.
- 8. **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.

STRYKER SALES, LLC, ACTING THROUGH ITS MEDICAL DIVISION		ALACHUA COUNTY, a charter county and political subdivision of the State of Florida ALACHUA COUNTY BOARD OF COMMISSIONERS	
By:	<i>Tom Tackabury</i>	By:	<i>Mary C. Affel</i>
Name:	Tom Tackabury	Name:	
Title:	Sr. Sales Manager, ProCare	Title:	
Date:	November 27, 2023	Date:	November , 2023 Dec 15, 2023

Approved as to Form

 Robert G. Swain
 Alachua County
 274E045D4F99416...
 Attorney


Item #10b, 23-00761, 1222023-13974

Final Audit Report

2023-12-15

Created:	2023-12-13
By:	Steve Donahey (asd@alachuaclerk.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPiIoXNjWSvArmhobj6XLRSlp5X26ujq8

"Item #10b, 23-00761, 1222023-13974" History

-  Document created by Steve Donahey (asd@alachuaclerk.org)
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-  Document emailed to bocccchairsignature@alachuacounty.us for signature
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-  Signer bocccchairsignature@alachuacounty.us entered name at signing as Mary C Alford
2023-12-15 - 9:37:27 PM GMT - IP address: 163.120.80.11
-  Document e-signed by Mary C Alford (bocccchairsignature@alachuacounty.us)
Signature Date: 2023-12-15 - 9:37:29 PM GMT - Time Source: server- IP address: 163.120.80.11
-  Agreement completed.
2023-12-15 - 9:37:29 PM GMT

- Government sanction/watch lists

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		ALACHUA COUNTY BOARD OF COMMISSIONERS	
By:	<i>Tom Tackabury</i>	By:	
Name:	Tom Tackabury	Name:	
Title:	Sr. Sales Manager, ProCare	Title:	
Date:	November 27, 2023	Date:	November , 2023