

HUMBOLDT GENERAL HOSPITAL

DISTRICT BOARD OF TRUSTEES

REGULAR BOARD MEETING

TUESDAY

OCTOBER 26, 2021

5:30 P.M.

SARAH WINNEMUCCA CONFERENCE ROOM

Alicia Cramer - Chairman
Michelle Miller - Secretary
JoAnn Casalez - Member
Gene Hunt - Member
Lewis Trout - Member
Ken Tipton - Member-Humboldt
County Commissioner

HUMBOLDT GENERAL HOSPITAL
118 EAST HASKELL STREET
WINNEMUCCA, NEVADA 89445

DISTRICT BOARD OF TRUSTEES MEETING AGENDA

MEETING DATE: Tuesday October 26, 2021
MEETING TIME: 5:30 pm
MEETING PLACE: Sarah Winnemucca Conference Room
Humboldt General Hospital
118 E Haskell St, Winnemucca, Nevada
PLACES POSTED: in Winnemucca, Nevada at:
Humboldt General Hospital, 118 E Haskell Street
Humboldt County Courthouse, 50 W Fifth Street
Winnemucca City Hall, 90 W Fourth Street
Humboldt County Library, 85 E Fifth Street
United States Post Office, 850 Hanson Street
www.hghospital.org https://notice.nv.gov
PERSON POSTING: Alicia Wogan

MEETING ATTENDANCE MAY BE
VIA TELECONFERENCE OR VIDEOCONFERENCE OR IN-PERSON
THE ATTENDANCE FOR MEMBERS OF THE GENERAL PUBLIC AT THE
PHYSICAL LOCATION MAY BE LIMITED DUE TO DISTANCING REQUIREMENTS
THE TELECONFERENCE AND VIDEOCONFERENCE ACCESS INSTRUCTIONS APPEAR BELOW

Teleconference: Dial 1-646-749-3122 - Access Code 368-086-437

Videoconference: <https://global.gotomeeting.com/join/368086437>

A. CALL TO ORDER

B. PUBLIC COMMENT

(This agenda item is designated to give the general public the opportunity to address the Hospital Board. No action may be taken upon a matter raised under this section until it is placed on an agenda for action. Public comment is generally limited to three (3) minutes per person.)

C. MEDICAL STAFF-HOSPITAL DEPARTMENT REPORTS

(These agenda items are designated to give the opportunity to report and update the Hospital Board on each group or department listed. No action may be taken upon a matter raised under this section until it is placed on an agenda for action.)

1. Medical Staff report – Chief of Staff
 - a) COVID update
2. MedX report – Bill Hammargren
3. Administration report
 - a) EMS update – Andrew Loveless
 - b) Harmony Manor update – Bertha Higbee
 - c) Interim CEO report

D. CONSENT AGENDA

(The Board is expected to review, discuss and take action on this agenda item. The items may be approved in a single motion; however, upon Board member request, any consent item may be moved to the discussion portion of the agenda and other action, including postponement or denial of the item, may take place.)

1. Board meeting minutes for: September 28, 2021.
2. Medical Staff applications for appointments, reappointments, provisional and temporary privileges for: Graham Hill, DO, Active-Physical Medicine and Rehabilitation; Patrick Osgood,

DISTRICT BOARD OF TRUSTEES MEETING AGENDA

October 26, 2021

Page 2

MD, Active-Orthopedics; Kevin Reyes, DO, Active-Psychiatry; Alvaro Galvis, MD, Active-Pediatrics; James Balodimas, MD, Consulting-Teleradiology; and, Merleen Grover, APRN-CNM, Allied Health Professionals-Midwifery.

E. FINANCIAL REPORTS

(The Board is expected to review, discuss and take action on this agenda item.)

1. Financial update
2. Warrants disbursed - Monthly expenditures
3. Budget information review

F. BUSINESS ITEMS-OTHER REPORTS

(The agenda items in this section are for discussion and for possible action. The action may consist of approval, disapproval, acceptance, rejection, authorization, adoption, recommendation, review, referral to staff, or any other action as appropriate. The items may be heard in any order and at any time unless a time is specified; two or more items may be combined for consideration; an item may be removed from the agenda; or, discussion relating to an item may be delayed at any time.)

1. Hospital Administration / request to approve purchase of Mako system with partial knee, total knee and total hip applications / CEO-Administration
2. Hospital Administration-RHC / request to approve purchase of ten Omniaire air filtration systems and associated fixtures and equipment for nursing / CEO-Administration
3. District Administration / request to authorize issuance and advertising of a request for proposals to provide hospital district legal services / Board of Trustees
4. Hospital Administration / ratification of decision to join the Nevada Hospital Association SB329 litigation / CEO-Administration

G. TRUSTEE COMMENTS-STAFF REPORTS

(This period is designated for receiving reports, information, updates and proposals from the board and/or staff. No action may be taken upon a matter raised under this section until it is placed on an agenda for action.)

H. PUBLIC COMMENT

(This agenda item is designated to give the general public an opportunity to address the Hospital Board. No action may be taken upon a matter raised under this section until it is placed on an agenda for action. Public comment is generally limited to three (3) minutes per person.)

Notice: This agenda has been physically posted at the locations noted above and electronically posted at <http://www.hghospital.org/> and at <https://notice.nv.gov/>.

Notice: The meeting may be accessed via: (i) teleconference by dialing 1-646-749-3122 and using access code 368-086-437; or, (ii) videoconference by entering <https://global.gotomeeting.com/join/368086437> in a web browser; or (iii) in-person at the scheduled location listed above.

Notice: Members of the public may make a public comment at the meeting without being physically present by: (i) emailing adminoffice@hghospital.org no later than 5:00 p.m. on the business day prior to the day of the meeting and messages received will be transcribed or printed for entry into the record and provided to the Board of Trustees for review; (i) telephone dialing 1-646-749-3122 and using access code 368-086-437; or, (ii) entering the following link <https://global.gotomeeting.com/join/368086437> in a web browser.

Notice: The Executive Assistant at the Administration Office located at Humboldt General Hospital, 118 E. Haskell Street, Winnemucca, Nevada, telephone number 775-623-5222 extension 1123, is the designated person from whom a member of the public may request the supporting material for the meeting. Staff reports and supporting material for the meeting are available on the Humboldt General Hospital website at <http://www.hghospital.org/> and are available to the general public at the same time the materials are provided to the Board of Trustees.

Notice: By law a public body may receive information from legal counsel regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction, or advisory power and such gathering does not constitute a meeting of the public body.

Notice: Reasonable efforts will be made to assist and accommodate disabled persons. Please contact the Administration Office by telephoning 775-623-5222 extension 1123, one (1) business day in advance of the meeting.



October 26, 2021

Board of Trustees
Ref: Medical Staff Meeting

The following Medical Staff Appointment, Reappointment, and Provisional privilege files were presented to Medical Staff for review and were approved on October 20, 2021:

Provisional: None

Appointment:

- Graham Hill, DO Active-Physical Medicine and Rehabilitation
- Patrick Osgood, MD Active-Orthopedics
- Kevin Reyes, DO Active-Psychiatry

Reappointment:

- Alvaro Galvis, MD Active-Pediatrics
- James Balodimas, MD Consulting-Teleradiology
- Merleen Grover, APRN-CNM Allied Health Professionals-Midwifery

Below details additional information on each Medical Staff file:

- **Graham Hill, DO** earned his Doctor of Osteopathic Medicine in June 2003 from the University of New England. Dr. Hill completed his Family Practice internship with Eastern Maine Medical Center in 2004. He then went to the University of Utah Hospitals and Clinics to complete his Physical Medicine and Rehabilitation residency in 2007. Dr. Hill also completed a fellowship in Interventional Spine with Adirondack Interventional Physiatry in 2008. Dr. Hill is currently board certified through the American Board of Physical Medicine and Rehabilitation. He has been practicing since 2008 at the Intermountain Salt Lake Clinic and has recently joined the Elko Spine and Rehabilitation Institute. Dr. Hill will be joining Humboldt General Hospital as a provider through this group as part of the visiting physicians. Dr. Hill was granted provisional privileges in April 2021 and began providing services at HGH in May 2021.
- **Patrick Osgood, MD** earned his Doctor of Medicine from the University of Nevada School of Medicine in 1992. Dr. Osgood completed his Surgical internship and Orthopedic residency with the State University of New York Health Science from 1992 to 1997. Dr. Osgood is currently board certified in General Orthopaedics through the American Board of Orthopaedic Surgery and has maintained certification since 1999. Dr. Osgood worked in private practice from 1997 to 2016 and then switched to contracted locum tenens work in 2016 to present. Dr. Osgood had previously provided coverage in Humboldt General Hospital's Orthopedic clinic from May 2016 to May 2017. He will be joining HGH's Orthopedic clinic through Synergy. Dr. Osgood was granted temporary privileges on March 31, 2021 and was granted provisional privileges April 30, 2021. Dr. Osgood began his first scheduled rotation April 12, 2021 and has provided coverage monthly since.
- **Kevin Reyes, DO** earned his Doctor of Osteopathic Medicine from Western University of Health Sciences with the College of Osteopathic Medicine of the Pacific in 2014. He completed his residency in General Psychiatry with the University of Nevada, Reno School of Medicine from June 2014 to June 2017. Dr. Reyes then went on to complete a fellowship in Child and



Adolescent Psychiatry with the University of Nevada, Las Vegas School of Medicine from July 2017 to June 2019. Dr. Reyes holds a current board certification in Child and Adolescent Psychiatry through the American Board of Psychiatry and Neurology, initially earned in September 2019. He also holds a BLS certification. Dr. Reyes has been working as a psychiatrist since 2018 in Las Vegas, NV. Dr. Reyes is one of the providers from Nevada Mental Health that is joining Humboldt General Hospital to provide services in the Behavioral Health Clinic. He started February 5, 2021 with temporary privileges providing services via telemedicine. Dr. Reyes was granted provisional privileges April 1, 2021 and will have temporary privileges to cover the month of October 2021 while his file is being processed for his active appointment.

- **Alvaro Galvis, MD** earned his Doctor of Medicine from the University of California, Irvine in May 2015. Dr. Galvis completed his Pediatric internship with the University of Nevada, Reno from July 2015 to June 2016. He then completed his Pediatric residency with the University of Nevada, Las Vegas from July 2016 to September 2018. Dr. Galvis is currently working on a fellowship in pediatric infectious disease through the University of California, Irvine that he started in July 2019. He holds current certifications in BLS, NRP, and PALS. Dr. Galvis has been working as a pediatrician since 2018 in Nevada; mainly working in Las Vegas and Winnemucca. Dr. Galvis was initially granted temporary privileges with Humboldt General Hospital in February 2019. Dr. Galvis provides pediatric services for HGH and covers PEDS call on a monthly basis.
- **James Balodimas, MD** earned his Doctor of Medicine from LA State University in 1993. Dr. Balodimas completed his transitional year internship and Internal Medicine internship with Baptist Health System from 1993 to 1995. He completed his Diagnostic Radiology residency with St. Vincent's Medical Center from 1995 to 1999, where he was chief resident from 1998 to 1999. Dr. Balodimas then completed a fellowship in Cross Sectional Imaging with the University of Arizona from 1999 to 2000. He holds a lifetime certification in Diagnostic Radiology through the American Board of Radiology that he earned in 2001. Dr. Balodimas has worked as a radiologist since 2000 and has done teleradiology and independent contract work as well. Dr. Balodimas is one of the teleradiologists that provides services to Humboldt General Hospital through Virtual Radiologic Professionals, LLC (vRAD). He has been working with vRAD since 2015 and was initially granted consulting privileges with HGH in October 2019.
- **Merleen Grover, APRN-CNM** earned her Master of Nursing in Nurse Midwifery from the University of Cincinnati in 2016. Merleen is currently board certified as a Midwife through the American Midwifery Certification Board; she initially earned the certification in August 2016. She has 20+ years of experience as a Registered Nurse working in different areas, including OB, Med/Surg, and scrub nurse. Merleen has worked as a certified Nurse Midwife since October of 2016; most positions were in Northern Nevada. She has worked in Elko, Ely, McDermitt, and is currently with Humboldt General Hospital in Winnemucca. Merleen joined HGH in May 2019 with temporary privileges. She has been providing services since in the Women's Health Clinic with Dr. Brecheen and Dr. Nainani.

Thank you,
Jessica Villarreal
Medical Staff Credentialing Coordinator

Department: Orthopedics

Item Description: Mako Robotic Arm Assisted Surgery

Justification:

- **Purpose: To assist with total hip and total knee surgeries. Benefit is a better bone cut, faster recovery and faster procedure time in the OR**
- **Other vendors considered/other quotes: No**
- **Return on Investment: Reviewing pricing of total hip or knee surgeries currently. Expect reduced surgery costs due to efficiencies gained from faster turnaround in OR**
- **Cost to purchase: \$1,475,109 - Seven-year installment plan with possible rebates (\$2,500 per total hip or knee) depending upon number of surgeries performed – for example first year installment due is \$172,645. If 69 total hip/knee surgeries performed during that year, HGH would receive a rebate of \$172,500 towards the installment payment**

Other Costs:

- **Service/Maintenance Agreement: \$110,000 annually beginning year two**
- **Consumables: Various costs, depends upon surgeries performed and will be billed to patient**

Request: Purchase of Mako Robotic Arm

Budgeted: No

stryker



Let's create
the future
together with
Mako

Mako™ Robotic-Arm Assisted Surgery

EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement, consisting of this cover page and any applicable schedules selected below (this "**Agreement**"), is entered into by and between MAKO Surgical Corp., a wholly-owned subsidiary of Stryker Sales, LLC (MAKO Surgical Corp., or any of its affiliates, together or separately, are referred to as "**Stryker Mako**") and the undersigned healthcare provider ("**Customer**") and sets forth the terms and conditions upon which Customer will gain access to Stryker Mako's RIO® Robotic Arm Interactive Orthopedic system (the "**Equipment**") from Stryker Mako. Stryker Mako and Customer are referred to individually as a "**Party**" and collectively as the "**Parties**."

Applicable Schedules:	<input checked="" type="checkbox"/> Schedule A – Equipment and Pricing <input checked="" type="checkbox"/> Schedule B – General Terms and Conditions <input checked="" type="checkbox"/> Schedule C – Software License Terms	<input checked="" type="checkbox"/> Schedule D – Warranty and Service Terms <input checked="" type="checkbox"/> Schedule E – Rebate <input checked="" type="checkbox"/> Schedule F – Robotic Product Pricing Agreement
------------------------------	--	--

Effective Date and Term: The term of this Agreement shall commence on the date this Agreement is executed by both Parties (the "**Effective Date**") and shall continue until terminated by mutual written agreement of the Parties ("**Term**"), provided Customer executed this Agreement and accepts installation of the Equipment on or prior to December 15, 2021. Stryker Mako may, in its sole discretion, elect to install the Equipment following such date.

Equipment Installation Location: (Customer Facility) Humboldt General Hospital
118 E Haskell St,
Winnemucca, NV 89445

Stryker Mako Account Executive: Jeff Yelvington

Signatures: By executing this Agreement, each signatory represents and warrants that such person is duly authorized to execute this Agreement on behalf of the respective Party.

HUMBOLDT GENERAL HOSPITAL	MAKO SURGICAL CORP.
Signature: _____ Name: _____ Title: _____ Date: _____ Address: 118 E Haskell St, Winnemucca, NV 89445	Signature: _____ Name: _____ Title: _____ Date: _____ 3365 Enterprise Ave. Weston, FL 33331
Notices will be sent to the Parties at the addresses listed herein.	

**SCHEDULE A
EQUIPMENT AND PRICING**

Mako™ System with Partial Knee, Total Knee, and Total Hip Applications				
QTY.	PART #	EQUIPMENT	List Price	Discounted Price
1	220000	Stryker Robotic Arm System (Mako™/RIO®) Includes:		
1	219999	RIO® Surgical Arm		
1	207110	RIO® Guidance Module		
1	209927	RIO® Camera Stand Assembly		
1	211394	RIO® Accessory Kit		
1	700001431977	Mako User Guides		
5	151250	Mako Power Tray		
1	200681	MAKOplasty® CT Scan Kit		
1	211845	Mako™ Partial Knee Application Includes:		
1	100020	RESTORIS® Partial Knee Software License		
2	151200	Mako Knee Tray		
2	151150	Stryker Leg Positioner Tray Kit		
1	203997	Surgeon & Surgical Staff Training, Knee		
1	214929	Mako PKA 3.0 User Manuals (Master CD) M3		
1	211846	Mako™ Total Hip Application Includes:		
1	208114	MAKOplasty® Total Hip Software License		
2	151236	Mako THA Array Kit		
2	206967	Hip End Effector, Variable Angle		
1	204490	Surgeon & Surgical Staff Training, Hip		
1	214409	Mako THA 4.0 User Manuals (Master CD) M3.0/3.1		
1	212183	Mako™ Total Knee Application Includes:		
1	212184	Mako™ Total Knee Software License		
2	151200	Mako Knee Tray		
2	151150	Stryker Leg Positioner Tray Kit		
1	212249	Surgeon & Surgical Staff Training, Total Knee		
1	214930	Mako TKA User Manuals (Master CD) M3		
Subtotal			\$ 1,815,000	\$ 1,299,000
Interest of 3.25%				\$ 176,109
TOTAL				\$ 1,475,109

CUSTOMER ACKNOWLEDGES:

Customer elects to PURCHASE the Equipment from Stryker Mako by paying to Stryker Mako seven (7) annual installments as detailed in the chart below (each an "Installment Payment"), the first of which is due 366 calendar days from the date of the first case utilizing the Equipment or sixty (60) days after installation of the Equipment, whichever occurs first. Customer shall be responsible for ensuring full payment is made to Stryker Mako.

Installment Schedule	
Year	Amount
1	\$ 172,645
2	\$ 173,855
3	\$ 206,331
4	\$ 212,959
5	\$ 231,495
6	\$ 236,903
7	\$ 240,921
Total	\$ 1,475,109

SCHEDULE B GENERAL TERMS AND CONDITIONS

1. **Pricing and Payment Terms: Taxes.** Customer agrees to gain access to the Equipment as indicated in Schedule A of this Agreement. Customer acknowledges that Customer shall be responsible for payment of all applicable state, and local taxes in connection with gaining access to the Equipment, and any other payments made to Stryker Mako hereunder. Stryker Mako shall include the applicable tax in its invoice to Customer unless Customer provides Stryker Mako with a current, state issued exempt, resale, or right-to-self-assess certificate.

2. **Shipment and Installation.**

2.1. **Shipping and Delivery.** Shipping is F.O.B. destination. All Equipment will be shipped to the address indicated in the Equipment Installation Location. Stryker Mako reserves the right to refuse to ship Equipment to third parties.

2.2. **Site Preparation.** Customer is responsible for providing the Equipment with an operating environment of suitable temperature and humidity. Access to a suitable and safe space for storage/uncrating of the Equipment prior to installation and the installation site will be provided by Customer at no charge as necessary for Stryker Mako to perform its obligations hereunder. Stryker Mako agrees to comply with any applicable, reasonable Customer policies regarding access to the installation site as provided in writing prior to or upon the Effective Date of this Agreement.

Any lifting equipment, building alterations, power supplies, power outlets, wiring, networking, or other work required by any applicable laws or by Stryker Mako in connection with the installation of the Equipment will be provided by Customer at its own expense. With the exception of the Food and Drug Administration ("FDA") approval, Customer is responsible for obtaining all government approvals required, if any, for remediation of the installation location, the installation and use of the Equipment, including without limitation any certificate of need and zoning variances. Customer will (a) complete all such activities diligently, (b) will keep Stryker Mako notified periodically of the results of its efforts, and (c), upon request, will provide Stryker Mako with written confirmation of such approvals.

2.3. **DISCLAIMER.** STRYKER MAKO OFFERS NO WARRANTY AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE PREMISES (OR THE UTILITIES AVAILABLE AT THE PREMISES) IN WHICH THE EQUIPMENT IS TO BE INSTALLED, USED, OR STORED, OTHER THAN THOSE ARISING FROM STRYKER MAKO'S FAILURE TO ACCURATELY SPECIFY THE LEVEL AND QUALITY OF PHYSICAL PREMISES AND UTILITIES NECESSARY FOR THE PROPER INSTALLATION AND OPERATION OF THE EQUIPMENT.

2.4. **Installation.** The Equipment will be installed by Stryker Mako during "**Normal Business Hours**" (8:00 am to 5:00 pm, local time, excluding national holidays). Installation services include (a) connecting the Equipment to working power outlets provided by Customer prior to delivery of the Equipment and (b) testing the Equipment after installation to verify compliance with Stryker Mako's standard installation protocols. Installation will be considered complete for the purposes hereof upon verification that the Equipment substantially complies with Stryker Mako's published performance specifications, as evidenced by Stryker Mako's and Customer's signature on the Packing Slip.

2.5. **Installation Services.** This Agreement includes standard installation services as outlined in section 2.4 only. Any additional time required, or delay(s) experienced in installing the Equipment resulting from the condition or location of Customer's premises, the condition or location of power supplies, outlets, or wiring, delay(s) in completing site preparation, or any similar or dissimilar cause(s) will be at Customer's own expense. Any labor in excess of standard installation services and any overtime incurred by Stryker Mako employees and/or agents in respect of such additional time required or delay(s) experienced (as well as any extra labor or overtime work performed at the request of Customer) will be invoiced to and paid by Customer at then-prevailing Stryker Mako demand service rates, within net thirty (30) days from the date of the applicable invoice.

2.6. **Acceptance.** Customer's "**Acceptance**" of the Equipment and transfer of title thereto shall be deemed to have occurred upon Customer's (i) execution of this Agreement and (ii) delivery and (iii) installation of the Equipment at Customer's facility as set forth in Section 2.4 above. In the event the Equipment is accessed through a lease or rental agreement with a financing company, title shall pass to the Customer in accordance to the terms of the agreement between the financing company and Customer.

3. **Use of Equipment.** Customer agrees and covenants to only allow physicians that (i) are qualified and experienced in orthopedic surgery, (ii) have been trained and certified by Stryker Mako, (iii) are, at all times, fully authorized, licensed and credentialed under applicable law, and (iv) are authorized by Customer to perform the applicable procedure (each, a "**Robotic-arm Assisted Procedure**") using the Equipment (each, a "**Qualified Physician**"). Customer further acknowledges and agrees that, while Stryker Mako has developed a training protocol for the Equipment which is, in Stryker Mako's opinion, reasonable to prepare Qualified Physician for Robotic-arm Assisted Procedures, each Qualified Physician, together with the Customer, is solely responsible for determining the adequacy of his/her skills and training. The Parties agree that Customer may appoint additional Qualified Physicians in consultation with Stryker Mako. Customer acknowledges that only Stryker Mako approved and supplied products (each a "**Product**") are FDA indicated for use with the Equipment. The Equipment shall only be operated at the Customer's facility where it is installed by Stryker Mako and shall not be moved from such facility absent the prior written consent of Stryker Mako.

Customer acknowledges and agrees that Stryker Mako or an affiliate's personnel who provide assistance for a Robotic-arm Assisted Procedure are not licensed medical personnel, are not licensed to and do not practice medicine, and are, in every case of use of the Equipment and/or Services, only supplying a technology support role to Customer. Customer further agrees and covenants that any and all operation of the Equipment by certified personnel shall be at all times undertaken pursuant to and only consistent with the protocols and instructions set forth in the Equipment user manuals (or any successor documents thereof).

4. **Products.** In performing Robotic-arm Assisted Procedures, Customer acknowledges the purchase of the necessary Products, which shall be governed by an agreement between Customer and Stryker Mako's affiliate Howmedica Osteonics Corp. Notwithstanding the foregoing, certain of the Products will be sold under the Robotic Product Pricing Agreement attached hereto as Schedule F.

5. **Collaboration.** In compliance with all applicable laws and regulations and at the option of Customer in its sole discretion, Customer and Stryker Mako agree to collaborate on health care professional and patient educational outreach concerning robotic-arm assisted surgery for orthopaedic hip and knee procedures utilizing Stryker Mako equipment at Customer's facility (the "Collaboration"). The Collaboration shall include but is not limited to:
- 5.1. **Demonstrating Economic Value.** Customer agrees to make available orthopaedic surgical services data to Stryker Mako, including the gross number of robotic-arm assisted primary and revision knee and hip procedures and non-robotic-arm assisted primary and revision knee and hip procedures performed by Customer prior to and following the first Stryker Mako Robotic-arm assisted procedure.
 - 5.2. **Online Resource Center.** Customer will receive password-protected access to an online resource center to assist with educational outreach efforts [available at: <https://makoresourcecenter.com/Mako/Login.aspx>]. The resource center provides information and materials regarding Equipment and Robotic-arm assisted surgery education and awareness for health care professionals and patients. Customer acknowledges it has ultimate control and responsibility for any and all materials it ultimately chooses to disseminate or utilize.
 - 5.3. **Educational Outreach Practices.** The Parties agree to make an individual available to speak to Stryker Mako, at least once as part of the Equipment launch, regarding guidance for utilizing the Online Resource Center and standard practices regarding Stryker Mako's general educational outreach concerning Robotic-arm assisted surgery and Customer's educational outreach concerning the same at Customer's facility.
6. **Software.** Use of the Equipment's software is subject to the Software License Terms set forth as Schedule C to this Agreement.
7. **Equipment Warranty and Service.**
- 7.1. Any warranties provided with respect to the Equipment are as set forth in the Warranty and Service Terms set forth as Schedule D to this Agreement.
 - 7.2. THE WARRANTIES REFERENCED IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IN LIEU OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF STRYKER MAKO. STRYKER MAKO NEITHER ASSUMES (NOR HAS AUTHORIZED ANY PERSON TO ASSUME FOR IT) ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE EQUIPMENT AND/OR SERVICES.
8. **Mako Program Analytics.** To assess the impact of the Equipment to Customer's service lines and to optimize the Equipment, Customer's purchase of the Equipment includes, through Stryker Mako's affiliate Stryker Performance Solutions, LLC ("SPS"), an optional program that includes periodic assessments of Customer's self-reported and patient-reported outcome data ("**Mako Program Analytics**"). SPS will review such assessments with Customer, at minimum, on a quarterly basis. Stryker Mako and SPS will contact Customer after Equipment is Accepted by Customer pursuant to Section 2.5 of this Agreement. Customer's participation in the SPS Mako Program Analytics is conditioned on the execution of a no-additional charge agreement with SPS which shall become an amendment to and incorporated into this Agreement. Notwithstanding the foregoing, Customer in its sole discretion has the option to participate in the Mako Program Analytics.
9. **Indemnification.** Stryker Mako agrees to indemnify Customer from any third-party liability and/or damages which Customer may suffer directly as a result of a defect in workmanship or design of the Equipment. This indemnification applies only if the instructions outlined in the Equipment's labeling, manual, and/or instructions for use are followed. This indemnification does not apply to liability and/or damages arising from: (a) an injury due to the negligence of any person other than an employee or agent of Stryker Mako; (b) the failure of any person other than an employee or agent of Stryker Mako to follow any instructions for use of the Equipment; or (c) the use of any product not purchased from Stryker Mako, or Equipment that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Stryker Mako. Customer agrees to indemnify Stryker Mako against any claims or losses or injuries arising from (a), (b), or (c) above resulting from the negligence or willful misconduct of any employee or agent of Customer.
10. **Limitation of Liability.** EXCEPT IN CONNECTION WITH STRYKER MAKO'S INDEMNITY OBLIGATIONS UNDER SECTION 9 ABOVE, STRYKER MAKO SHALL HAVE NO LIABILITY TO ANY PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES BY REASON OF ANY ACT OR OMISSION OR ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT AND/OR THE SERVICES, OR THE SALE, DELIVERY, INSTALLATION, MAINTENANCE, TRAINING ON, OPERATION, PERFORMANCE, OR USE OF THE SAME, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOST REVENUES, LOST PROFITS, DAMAGE TO ASSOCIATED EQUIPMENT AND OTHER GOODS AND SERVICES OR TO FACILITIES, COSTS OF CAPITAL, COSTS OF SUBSTITUTE PRODUCTS, FACILITIES, OR SERVICES, COSTS OF REPLACEMENT POWER, COSTS ASSOCIATED WITH DOWN TIME, AND ANY SIMILAR AND DISSIMILAR LOSSES, COSTS, OR DAMAGES.
11. **Confidentiality.** Stryker Mako and Customer: (a) shall hold in strictest confidence this Agreement (including, without limitation, any and all pricing, discounts, purchase terms, and payment terms) and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary or confidential information; (b) hereby covenant to not disclose such information to any third party without prior written authorization of the one to whom such information relates; and (c) agree that any breach or threatened breach of this section would cause irreparable harm, that a remedy at law will be inadequate to remedy such a breach or threatened breach, and that this section shall be enforceable by way of a restraining order or injunction, without the necessity of posting a bond, in addition to any other available legal remedies. Notwithstanding anything to the contrary set forth herein in this Section 11, either Party shall have the right to disclose contract terms and conditions as well as pricing terms to those parties and/or consultants either Party has or will contract with or retain in the course of managing its business, provided that those parties/consultants agree in writing that they shall maintain the confidential information with no less a standard of care than the requirements contained herein and not use or divulge such confidential information to any third party, except as necessary for the discharge of their obligations to the disclosing Party or as required by law.
12. **Compliance Matters.**

- 12.1. **Compliance with Law.** In the performance of this Agreement, Customer and Stryker Mako shall at all times comply with all applicable federal, state, and local laws and regulations, including but not limited to, the Federal Food, Drug and Cosmetic Act, the Federal False Claims Act, and the Anti-Kickback Law.
- 12.2. **Discount Disclosure and Reporting.** Stryker Mako, as supplier, hereby informs Customer, as buyer, 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 each 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 Equipment. Customer represents that it shall make all required reports and disclosures.
- 12.3. **Discounts and Rebates for Products.** Discounts and rebates received by Customer with respect to the Products under this Agreement are "discounts or other reductions in price" under the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)(3)(A)). Consistent with the Anti-Kickback Statute and the discount safe harbor (42 C.F.R. § 1001.952(h)), if Customer reports its costs on a cost report pursuant to applicable state or federal cost reporting requirements, Customer shall fully and accurately report such discounts and other reductions in price in the applicable cost report. Customer also shall provide all information about such discounts and rebates as requested by any federal or state agency. Stryker Mako will provide Customer with sales and discount information to allow Customer to comply with this section, including sufficient rebate and pricing information to enable Customer to accurately report its actual costs for all purchases of Consumables made pursuant to this Agreement.
- 12.4. **Protection of Patient Information.** All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the Term of the Agreement, including but not limited to protected health information ("PHI") as defined in regulations implementing the Health Insurance Portability and Accountability Act of 1996 and 45 C.F.R. parts 142 and 160-164, as amended ("HIPAA"), shall be treated by both Parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. The Parties acknowledge that data provided pursuant to Section 5 of this Agreement shall not include any PHI, but that Stryker Mako requires access to identified session files and other diagnostic information residing on the Equipment from each Robotic-arm Assisted Procedure for the purpose of conducting regulatory investigations related to reports of potential adverse events or product complaints which are identified by the Qualified Physician, Customer personnel, or Stryker Mako employee present during a case. Stryker Mako is not a "business associate" of Customer, as the term "business associate" is defined by HIPAA regulations. To the extent Stryker Mako in the future becomes a business associate of Customer, the Parties agree to negotiate to amend the Agreement as necessary to comply with HIPAA, and if an agreement cannot be reached the Agreement will immediately terminate.
13. **Use of Name.** Stryker Mako hereby grants Customer the right to use Stryker Mako's name in furtherance of Customer's and Stryker Mako's Collaboration contemplated under Section 5 of this Schedule B; provided, however, that Stryker Mako reserves the right to terminate this right to use at any time in its sole discretion.
14. **Insurance.** During the Term of this Agreement, Stryker Mako will maintain commercial general liability insurance, including coverage for products and completed operations, with limits of \$1,000,000 per occurrence and \$3,000,000 aggregate; automobile liability insurance with a combined single limit of \$1,000,000 each accident covering Stryker Mako's use of owned, non-owned and hired vehicles; and workers compensation insurance subject to statutory limits and employer's liability insurance with limits of \$1,000,000 each accident, and \$1,000,000 each employee and policy limit for disease, covering claims arising out of Stryker Mako's activities and obligations under this Agreement, including Customer's use of Equipment purchased from Stryker Mako under this Agreement according to the instructions for use. Notwithstanding any other requirements within this Agreement to the contrary, to the extent allowed by applicable law or regulation, Stryker Mako shall be permitted to comply with these insurance requirements through a program of self-insurance. When requested by Customer, Stryker Mako will furnish an insurance certificate issued by an authorized agent of the insurer(s) evidencing the above referenced insurance coverage.
15. **Miscellaneous.**
- 15.1. **Assignment.** Neither Party may assign or otherwise transfer its rights, duties and responsibilities under this Agreement without first receiving the written consent of the other Party, which in no case shall be unreasonably withheld. Notwithstanding the foregoing, no consent by Customer shall be required for an assignment by Stryker Mako pursuant to a merger, consolidation, or internal or other change of control of Stryker Mako or an affiliate. Customer agrees that Customer is prohibited from selling or transferring the Equipment under this Agreement and that Customer shall not otherwise enter into any agreement with a third party to transfer title and/or any right to use the Equipment without first receiving the written consent of Stryker Mako. Any purported assignment, sale or transfer in violation of this section shall be void.
- 15.2. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan and the Parties consent and agree that any and all litigation arising from this Agreement will be conducted by state or federal courts located in State of Michigan. The invalidity or unenforceability of any provision hereof will not affect any other provision, and all terms and conditions will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted. The failure of Customer or Stryker Mako at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. The waiver of any remedy with respect to any default will not be taken as a waiver of any remedy for any succeeding default.
- 15.3. **Force Majeure.** Neither Party shall be liable for any delay or default caused by events beyond its control, including, without limitation, any acts of God, acts of suppliers or other third parties, acts of the other Party (or any of the other Party's employees, agents, or representatives), acts of civil or military authorities, terrorism, fires, floods, and other similar or dissimilar natural causes, riots, wars, sabotage, vandalism, embargoes, labor disputes, strikes, lockouts, delays in receiving any permits or licenses, delays caused by any laws, regulations, proclamations, ordinances, or any government action or inaction, delays caused by contractors and subcontractors, pandemic, epidemic, and any other cause or condition beyond such Party's control, and the time for performance

of such Party's obligations hereunder shall be extended for the commercially reasonable period of time in the event of any delay or default for such cause(s).

- 15.4. **Entire Agreement.** This Agreement may be executed in counterparts, each of which are deemed to be original, but all of which together constitute one and the same instrument. Copies of signatures sent by facsimile transmission or any other electronic means are deemed to be originals for purposes of execution and proof of this Agreement. This Agreement may only be amended by written agreement of the Parties. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, consignment agreement or related similar document, this Agreement will control. 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.
- 15.5. **Surgical Scrubs.** Notwithstanding anything contained in this Agreement to the contrary, Stryker Mako will not participate in any Customer program, procedure, vendor credentialing requirement, policy or directive requiring Stryker Mako personnel or agents to purchase surgical scrubs from Customer, Customer designee or any third-party vendor operating in Customer's facility. T
- 15.6. **Survival.** The terms and conditions herein that by their terms are intended to survive the expiration or termination of this Agreement, including without limitation the provisions set forth in Sections 3 – 6, 8 – 12, 14, 15.1 and 15.2 of this Agreement, shall survive the execution and delivery of this Agreement and its expiration or termination.

**SCHEDULE C
SOFTWARE LICENSE AGREEMENT**

1. All Software associated with the Equipment is and shall remain the sole proprietary and confidential property of Stryker Mako. The rights herein granted to Customer shall not affect the exclusive ownership by Stryker Mako of the Software or of any trademarks, copyrights, patents, trade secrets, proprietary rights, or other property rights of Stryker Mako (or any of Stryker Mako's suppliers or licensors) pertaining to the Software.
2. Stryker Mako hereby grants to Customer a limited, personal, nonexclusive, and nontransferable license to use the computer software package (the "**Software**") necessary for the operation of the Equipment on the terms and conditions defined or referenced herein for so long as Customer may own or have valid access to the Equipment. THIS LICENSE DOES NOT EXTEND TO ANY MAINTENANCE OR SERVICE SOFTWARE SHIPPED TO OR LOCATED AT CUSTOMER'S PREMISES WHICH IS INTENDED TO ASSIST STRYKER MAKO EMPLOYEES OR AGENTS IN THE INSTALLATION, TESTING, SERVICE, AND MAINTENANCE OF THE EQUIPMENT.
3. THE LICENSE HEREBY GRANTED TO CUSTOMER DOES NOT INCLUDE ANY RIGHT TO USE THE SOFTWARE FOR PURPOSES OTHER THAN STANDARD OPERATION OF THE EQUIPMENT OR TO COPY, REPRODUCE, SELL, ASSIGN, TRANSFER, OR SUBLICENSE THE SOFTWARE FOR ANY PURPOSE, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF STRYKER MAKO, WHICH STRYKER MAKO MAY WITHHOLD IN ITS SOLE DISCRETION. If such permission is obtained, Customer agrees to apply Stryker Mako's copyright notice or other identifying legends to such copies or reproductions.
4. Customer agrees that only authorized employees or agents of Customer will use the Software or have access to the same (or to any part thereof) and that none of Customer's employees or agents will disclose any part or all of the Software, or permit any part or all the same to be used by any person or entity other than those identified herein. Customer acknowledges that certain of Stryker Mako's rights may be provided from license agreements with third parties and, as such, Customer agrees to preserve the confidentiality of information provided to Stryker Mako under such third-party license agreements.
5. Customer is prohibited from making any modifications to the Software. If Customer modifies the Software in any manner, all warranties associated with the Software and the Equipment shall become null and void. If Customer or any of its officers, employees, or agents should make any revisions, enhancements, or improvements in the Software, Customer shall promptly disclose such improvements to Stryker Mako and shall become the property of Stryker Mako. Customer shall convey any and all title to such revisions, enhancements or improvements to Stryker Mako.
6. The Software is licensed to Customer provided that (a) Customer shall maintain the configuration of the Equipment as it was originally designed and manufactured and (b) the Equipment includes only those subsystems and components certified by Stryker Mako. The Software may not perform as intended on systems modified by personnel other than those under the direct supervision of Stryker Mako or on systems which include subsystems or components not certified by Stryker Mako. Stryker Mako does not assume any responsibility or liability with respect to unauthorized modification or substitution of subsystems or components.
7. IF CUSTOMER NO LONGER USES THE SYSTEM, CHOOSES TO "SWAP OUT" AND/OR "TRADE IN" THE EQUIPMENT OR REPAIR THE SOFTWARE, CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING POSSESSION AND CONTROL OF THE SOFTWARE UNTIL PROPERLY DELIVERED TO STRYKER MAKO OR ITS AGENTS. CUSTOMER IS RESPONSIBLE FOR PROVIDING IMMEDIATE WRITTEN NOTIFICATION TO STRYKER MAKO AT LEAST FOURTEEN (14) DAYS PRIOR TO ALLOWING ACCESS TO THE SAME BY ANY PARTY NOT RELATED TO, OR AFFILIATED WITH, CUSTOMER OR STRYKER MAKO.
8. OTHER THAN ANY WARRANTY PROVIDED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STRYKER MAKO AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS SOFTWARE LICENSE AGREEMENT, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.
9. Customer hereby acknowledges that the Software is or may be subject to one (1) or more export control laws or regulations, and agrees that it will not transfer, export or re-export the Software without complying with all applicable export control laws and regulations. Customer agrees it will not export or re-export the software to a national of a country listed in "Country Groups" D:1 or E:2 (as defined in the Export Administration Regulations), nor will Customer export or re-export the direct product of the software to such Country Groups without first obtaining a license from the U.S. Department of Commerce. The obligations in this paragraph shall survive the expiration or termination of this Agreement.
10. Customer shall cause each authorized user of the Software to abide by the terms and conditions of this Software License Agreement as if each were a party hereto.
11. This license shall continue for as long as Customer continues to use the Equipment, except that Stryker Mako may terminate this license in the event of any default by Customer. Customer agrees to cease use of and return the Software and any authorized copies thereof to Stryker Mako immediately upon expiration or termination of this license.

SCHEDULE D WARRANTY AND SERVICE TERMS

This Schedule D (also referred to as these "**Warranty and Service Terms**") are hereby incorporated into the Agreement by and between Stryker Mako and Customer and relate to the warranty and maintenance of the Equipment and are subject to the terms and conditions contained elsewhere in this Agreement. In the event of a conflict between the other terms and conditions of the Agreement and of this Schedule D, the terms and conditions of this Schedule D shall govern. Capitalized terms used herein and not defined shall have the meanings ascribed to them elsewhere in the Agreement.

1. TERM

- 1.1 Warranty. Stryker Mako warrants that the Equipment will be free from defects in material and workmanship (the "Warranty") for one (1) year beginning upon Acceptance of the Equipment (the "Initial Warranty Period"). Stryker Mako's obligation under this Warranty shall be limited to repairing or replacing (at Stryker Mako's option) any part of the Equipment which, if properly installed, used and maintained, proves defective in material or workmanship within the Initial Warranty Period, provided that notice of any such defect and satisfactory proof thereof is promptly given by Customer to Stryker Mako. This Warranty does not apply to products normally consumed in operation of the Equipment or which have a normal life inherently shorter than the Initial Warranty Period.
- 1.2 Service. Stryker Mako will provide the services set forth in these Warranty and Service Terms for a period of six (6) consecutive years beginning on the expiration of the Initial Warranty Period on the originally installed Equipment (the "Service Period").

2. PRICE AND PAYMENT TERMS

- 2.1 Warranty. There is no charge for the Services (as defined below) contained in these Warranty and Service Terms during the Initial Warranty Period.
- 2.2 Service. Customer shall pay to Stryker Mako an annual service fee of \$110,000 (the "Annual Service Fee") for the Services contained in these Warranty and Service Terms during the Service Period. The Annual Service Fee shall be paid to Stryker Mako on or before the first day of each year of the Service Period.

3. DUTIES OF STRYKER MAKO. During the Initial Warranty Period and Service Period, Stryker Mako will provide the following services to Customer pursuant to these Warranty and Service Terms (referred to collectively as the "Services"):

- 3.1 Covered Services. Stryker Mako agrees to provide maintenance, including, without limitation, preventative maintenance, repair of the Equipment and Software, hardware reliability upgrades and software updates performed as applicable in Stryker Mako's sole discretion. The price for the Services includes all parts, labor and travel expenses, except those listed in Section 4 of these Warranty and Service Terms or set forth elsewhere herein. The Services shall be performed during Normal Business Hours. If Customer requests that Services be performed outside the Normal Business Hours, said Services will be furnished on a commercially reasonable efforts' basis.
- 3.2 Response Time. On-site response will occur within twenty-four (24) hours during Normal Business Hours, unless Customer and Stryker Mako agree otherwise.
- 3.3 Loaners/Replacements. Should downtime of the Equipment continue for at least forty-eight (48) continuous hours, Stryker Mako will ship to Customer's facility within forty-eight (48) hours and install, at its sole expense, a loaner or replacement RIO® Robotic Arm Interactive Orthopedic system, unless Stryker Mako and Customer agree otherwise.
- 3.4 Exchanges. If, during any consecutive three (3) month period of the Initial Warranty Period and Service Period, the Equipment experiences a recurring identified failure that Stryker Mako is unable to adequately repair (as determined by Stryker Mako in its reasonable discretion), Stryker Mako agrees to replace the Equipment at no cost to Customer.
- 3.5 Maintenance Parts. Stryker Mako will provide all necessary replacement parts to maintain the Equipment, except for the consumable items listed in Section 4 of these Warranty and Service Terms. Replacement parts will be either new parts or certified refurbished parts that in Stryker Mako's sole judgment are of equal performance and quality to new parts. All parts will be furnished on an exchange basis and all replaced parts become the sole property of Stryker Mako.
- 3.6 Service outside the 48 contiguous United States. Such service will be periodically scheduled in advance by Stryker Mako, in its sole discretion. If Customer requires an immediate response, Customer will pay all travel expenses of Stryker Mako personnel.
- 3.7 Scheduled Maintenance. Stryker Mako will provide scheduled maintenance for the Equipment at intervals determined by Stryker Mako in its sole discretion, but not less than two (2) times per year and scheduled at mutually agreeable times with Customer.
- 3.8 Troubleshooting. Stryker Mako may troubleshoot with one or more individuals designated by Customer via telephone to resolve a problem in lieu of traveling to Customer's facility to repair the Equipment.
- 3.9 CT Validation. Up to three (3) CT scan equipment validations shall be provided to Customer and included in the Services.
- 3.10 Purchase of Surgical Scrubs. Notwithstanding anything contained in these Warranty and Service Terms to the contrary, Stryker Mako will not participate in any Customer program, procedure, vendor credentialing, policy or directive requiring Stryker Mako personnel or agents to purchase surgical scrubs from Customer, Customer designee or any third-party vendor operating in Customer's facility.

4. EXCLUSIONS FROM SERVICES. The following actions and items are excluded from the Services:

- 4.1 **Misuse.** If Services are required as a result of, or arising from: (i) any intentional acts or negligence of Customer's employees, agents or invitees; (ii) anyone other than Stryker Mako authorized personnel attempting to repair or service the Equipment; (iii) use of equipment or devices not provided by Stryker Mako; (iv) misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it was not designed; or (v) the loading of third-party software without the prior written approval of Stryker Mako, including, without limitation, device drivers not approved by Stryker Mako. Requests for Services related to misuse will be billed to Customer at Stryker Mako's then-current billable rates for travel, labor, and parts.
 - 4.2 **Consumables and Accessories.** Consumables and accessories are defined as Burrs, Reamer Cups, Drapes, Bone Pins, Reflective Markers, Irrigation Tubes, Checkpoints, Leg Holder Boots, and other consumables.
 - 4.3 **System Enhancements.** System upgrades, new features to the Equipment or Software not available at the time of purchase or new product applications, deemed by Stryker Mako to be major additions to the Equipment or Software.
 - 4.4 **Electrical Work.** Electrical work external to the Equipment.
 - 4.5 **Cosmetic Work.** Painting or refinishing, or the furnishing of the materials for this purpose.
 - 4.6 **Moved Equipment.** Maintenance required in order to repair damage resulting from Customer's transportation of the Equipment.
 - 4.7 **Data File Transfer and Recovery.** Stryker Mako shall demonstrate to Customer how to perform patient data file transfer, restoration and recovery prior to the first clinical case, and Customer warrants that it will not request Stryker Mako personnel to do same on Customer's behalf.
5. **RESPONSIBILITIES OF CUSTOMER**
- 5.1 **Access to Equipment.** When Stryker Mako arrives at Customer's facility, Customer will provide Stryker Mako personnel reasonable access to the Equipment so that they may perform the Services. Customer may be billed at prevailing labor rates for lost time and travel if Stryker Mako personnel are not permitted reasonable access to the Equipment.
 - 5.2 **Service Authorization.** Customer agrees to allow Stryker Mako personnel to service, upgrade and maintain the Equipment under the terms of these Warranty and Service Terms.
 - 5.3 **Payment Terms.** Customer must pay the total amount due for the Services including all applicable federal, state and local taxes in accordance with the payment schedule set forth in these Warranty and Service Terms. Payment for Services outside Normal Business Hours or for work performed other than Services that is outside the scope of these Warranty and Service Terms will be due and payable within thirty (30) days after Customer's receipt of the applicable invoice.
 - 5.4 **Renewal.** If Customer does not renew these Warranty and Service Terms to extend after the expiration of the Service Period, and subsequently requests Services in connection with the Equipment, all parts, labor, travel time and travel expenses will be billed to Customer at Stryker Mako's then-current billable rates. Customer shall notify Stryker Mako if it desires to renew these Warranty and Service Terms at least thirty (30) business days prior to the expiration of the Service Period.
 - 5.5 **Patient Data Files.** Integrity, maintenance, archive and backup of patient data files are the sole responsibility of Customer.
6. **EQUIPMENT LOCATION.** The Equipment is located at Customer's facility as described in the Agreement. Any subsequent resale or removal to a new location without Stryker Mako's prior written approval may result in immediate cancellation of these Warranty and Service Terms by Stryker Mako in its sole discretion.
7. **INSPECTION.** If (i) Customer does not utilize, terminates or fails to renew these Warranty and Service Terms and (ii) Customer elects to utilize or renew these Warranty and Service Terms at least thirty (30) days after such expiration or earlier termination, Stryker Mako, with reasonable notice to Customer, shall require Customer to pay the costs and expenses of a site inspection of the Equipment, performed by Stryker Mako personnel during Normal Business Hours, to determine the operating status of the Equipment. The inspection will be billed at Stryker Mako's then-current time and materials rate.

SCHEDULE E

During each consecutive twelve-month period beginning on the date of the first case utilizing the Equipment or sixty (60) days after installation of the Equipment, whichever occurs first, (the "Start Date") and continuing during the Rebate Term (as hereinafter defined) (each, a "Measurement Period"), Customer will be eligible to earn a rebate ("Rebate") in an amount corresponding to the criteria set forth below ("Eligibility Criteria"), provided Customer meets such Eligibility Criteria during the applicable Measurement Period. This Rebate shall terminate upon the earlier of (i) the seventh (7th) anniversary of the Installation Date or (ii) at such time when the Rebates earned by Customer hereunder equals \$1,475,109 (the "Rebate Term"). Notwithstanding anything in this Agreement to the contrary, in the event Customer's Product pricing changes during the Rebate Term, Stryker Mako reserves the right and discretion to amend the terms of this Rebate upon prior written notice to Customer.

The term "Stryker Procedure" means a primary total hip or knee procedure (manual or robotic) performed at Customer's facility that utilizes only Stryker implant products.

Eligibility Criteria	Rebate Amount
The number of Stryker Procedures performed by Customer during the Measurement Period (or part thereof) that is greater than the applicable Baseline Procedures. The term "Baseline Procedures" means the total number of Stryker Procedures performed by Customer during the twelve-month period preceding the Installation Date.	Two-thousand five-hundred dollars (\$2,500) per Stryker Procedure performed and invoiced for during the current twelve-month period that are in excess of Baseline Procedures. By way of example, if Baseline Procedures is equal to ten (10) and Customer performs and is invoiced for fifteen (15) Stryker Procedures during the current twelve month period, then Customer will earn a \$12,500 Rebate ((15 – 10)*\$2,500).

Payment. Rebates will be calculated following the end of each Measurement period, and shall be directed, at the election of Customer, to pay down the outstanding amounts owed on the purchase of Customer's Equipment. In the event Customer's rebate balances exceed required obligations in a given Measurement Period, Stryker Mako hereby agrees that excess amounts shall be carried forward to pay down future obligations.

Reporting. Stryker will provide Customer with an invoice upon the initial sale of the Products stating that the sale may be subject to a later rebate. Following the end of each Measurement Period, Stryker will provide Customer with a report detailing each Product purchased by Customer during such Measurement Period, the amounts paid for such Products, and the aggregate amount of rebate earned. Customer will properly report prices paid for Product hereunder net of all discounts (including rebates and credits) as required by law or contract.

SCHEDULE F
Robotic Product Pricing Agreement

This **ROBOTIC PRODUCT PRICING AGREEMENT** and the attached and referenced Exhibit A (collectively, the "Agreement") is between Humboldt General Hospital ("**Customer**") and Howmedica Osteonics Corp., acting through its Orthopaedics Division., a New Jersey corporation with a place of business at 325 Corporate Drive, Mahwah, NJ 07430 ("**Stryker**") (each, a "Party" and collectively, the "Parties").

AGREEMENT:

Stryker manufactures and sells certain medical devices. Customer owns and operates a hospital and affiliated facilities, at least one of which has access to a MAKO RIO Robotic Arm Interactive Orthopedic system (the "**Equipment**"). Customer wishes to purchase products at the prices and subject to the terms, conditions and assurances set forth herein. Customer represents and warrants that it has the legal authority to sign on behalf of its affiliated facilities and bind its affiliated facilities to the terms of this Agreement. Customer acknowledges that only MAKO Surgical Corp., an affiliate of Stryker, approved Products are indicated for use with the Equipment.

The Parties therefore agree as follows:

Definitions. "**Products**" has the meaning set forth in Exhibit A.

1. **Term.** This Agreement is effective as of the date executed by the last party below (the "**Effective Date**") and shall continue in full force and effect for a period of seven (7) years thereafter.
2. **Products and Prices for the Products.** Only Products expressly covered by Exhibit A and purchased under this Agreement are eligible for the pricing in this Agreement. Product pricing shall be as set forth on Exhibit A. Product pricing (including any price concessions set forth on Exhibit A) is contingent upon Customer's compliance with all terms and conditions set forth in this Agreement.
3. **Shipment and Delivery.** Except for those Products purchased on a consignment basis, all Products purchased directly from Company are shipped F.O.B. shipping point, freight prepaid and added to the invoice. Freight charges shall be determined in accordance with the following schedule:
 - Actual cost for standard deliveries;
 - Actual cost for orders that require delivery of Products within 48 hours of the receipt by Company of a purchase order for such Products; and
 - Actual cost for Products provided to Customer on a loan or bailment basis and used by Customer in a procedure.
4. **Invoices/Payments.** Customer must pay in full invoices within thirty (30) days from the date of invoice. In the event Customer wishes to dispute an invoice or portion thereof, Customer must notify Stryker in writing within fifteen (15) days of its receipt. The writing must provide Stryker with sufficient detail regarding the basis and amount of the dispute. If Customer does not dispute an invoice within fifteen (15) days of its receipt of same, the invoice will be deemed to have been approved by Customer.
5. **Reporting.** Stryker, as supplier, hereby informs Customer, as buyer, of Customer's obligation to make required reports (including reporting on net prices paid for items supplied hereunder) under the Federal Medicare and Medicaid Anti-Kickback Statute and the regulations thereunder (42 CFR Part 1001.952(h)).
6. **WARRANTY.** ANY WARRANTIES PROVIDED BY COMPANY WITH RESPECT TO A GIVEN PRODUCT ARE AS DESCRIBED IN THE LABELING ACCOMPANYING UNITS OF THAT PRODUCT ON PURCHASE. COMPANY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES REGARDING THE PRODUCTS INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **Indemnity.** Stryker agrees to indemnify Customer from any third-party liability and/or damages which Customer may suffer directly as a result of a defect in workmanship or design of the Products. This indemnification applies only if the instructions outlined in the Product's labeling, manual, and/or instructions for use are followed. This indemnification does not apply to liability and/or damages arising from: (i) an injury due to the negligence of any person other than an employee or agent of Stryker; (ii) the failure of any person other than an employee or agent of Stryker to follow any instructions for use of the Product; or (iii) the use of any product not purchased from Stryker, or Product that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Stryker. . Customer agrees to hold Stryker harmless and indemnify Stryker against any claims or losses or injuries arising from (i), (ii), or (iii) above resulting from the negligence or willful misconduct of any employee or agent of Customer.
8. **LIMITATION OF LIABILITY.** 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.
9. **Confidentiality.** Stryker and Customer: (a) shall hold in confidence this Agreement and the terms and conditions contained herein (including, without limitation all terms relating to Product pricing) and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary or confidential information; (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates; and (c) agree that any breach or threatened breach of this section would cause irreparable harm to the disclosing party, that a remedy at law will be inadequate to remedy any such breach or threatened breach, and that this section shall be enforceable by way of a restraining order or injunction. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.
10. **Miscellaneous.**

9.1 Force Majeure. No Party shall be liable for failure of or delay in performing obligations set forth in this Agreement, and no Party shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably beyond the control of such Party.

9.2 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey and the Parties consent and agree that any and all litigation arising from this Agreement will be conducted by state or federal courts located in State of New Jersey, and Customer consents to the jurisdiction of the New Jersey courts in such an event.

9.3 This Agreement shall inure to the benefit of, and be binding upon, Customer and Company and their respective successors and assigns. Customer represents to Company that it is duly authorized to execute this Agreement. Neither Party may assign any of its rights or obligations under this Agreement, either voluntarily or involuntarily, without the prior written consent of the other Party. Any purported assignment in violation of the preceding sentence will be void.

9.4 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, including any group purchasing agreements to which Customer may be a party. This Agreement may only be amended by written agreement of the Parties. In the event of an inconsistency or conflict between this Agreement and any purchase order, invoice, consignment agreement or similar document relating to the purchase of any units of any Product, this Agreement will control.

9.5 The Warranty, Liability, Confidentiality and Miscellaneous provisions of this Agreement shall survive its termination or expiration.

IN WITNESS WHEREOF, each Party has executed and delivered this Agreement as of the date respectively set forth underneath such Party's name below.

Howmedica Osteonics Corp., acting through its Orthopaedics Division

HUMBOLDT GENERAL HOSPITAL

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A – Products

Mako Consumables Procedure Pricing	Part Number	Component Quantity	LIST PRICE	DISCOUNTED PRICE
MCK Consumables includes:			\$ 1,547.00	\$ 1,005.55
Vizadisc™ Knee Procedure Tracking Kit	107120	1		\$ 228.15
DeMayo® Leg Wrap, Sterile	110550	1		\$ 37.70
MICS Irrigation Clip	116239	1		\$ 120.25
RIO System Irrigation Tube	111613	1		\$ 120.25
MICS Ball Burr	110135	1		\$ 77.35
RIO® Drape Kit, One Piece with Pockets	111320	1		\$ 50.70
Checkpoint Kit, Sterile	111645	1		\$ 100.75
Bone Pin (any size) - 2 pack, Sterile	Multiple	2		\$ 270.40
PF Consumables includes:			\$ 1,266.00	\$ 822.90
Vizadisc™ Knee Procedure Tracking Kit	107120	1		\$ 228.15
DeMayo® Leg Wrap, Sterile	110550	1		\$ 37.70
MICS Irrigation Clip	116239	1		\$ 120.25
RIO System Irrigation Tube	111613	1		\$ 120.25
MICS Ball Burr	110135	1		\$ 77.35
RIO® Drape Kit, One Piece with Pockets	111320	1		\$ 50.70
Femoral Checkpoint, Sterile	111644	1		\$ 53.30
Bone Pin (any size) - 2 pack, Sterile	Multiple	1		\$ 135.20
Total Knee Consumables includes:			\$ 1,070.00	\$ 695.50
VIZADISC™ Knee Procedure Tracking Kit	107120	1		\$ 228.15
Checkpoint Kit, Sterile	111645	1		\$ 100.75
Stryker Leg Positioner Wrap, Sterile	111618	1		\$ 39.00
RIO® Drape Kit, One Piece with Pockets	111320	1		\$ 50.70
Silicone Retractor Cord	111619	1		\$ 6.50
Bone Pin (any size) - 2 pack, Sterile	Multiple	2		\$ 270.40
Total Hip Consumables includes:			\$ 1,107.00	\$ 719.55
Vizadisc™ Hip Procedure Tracking Kit	107130	1		\$ 228.15
RIO® Drape Kit, One Piece with Pockets	111320	1		\$ 50.70
Tibial Checkpoint, Sterile	111651	1		\$ 53.30
CHECKPOINT, 3.5 MM HEX X 15 MM, STERILE	116230	1		\$ 117.00
Bone Pin (any size) - 2 pack, Sterile	Multiple	2		\$ 270.40

Mako Optional Consumables	Part Number	Quantity	LIST PRICE	DISCOUNTED PRICE
Checkpoint, 3.5mm Hex, Impaction, Sterile	111653	1		\$ 117.00
Cortical Screw, Sterile	116240	1		\$ 296.40
Variable Angle Cortical Screw, Sterile	111655	1		\$ 296.40

Department: HGH these units can be used throughout the Facility

Item Description: Air blower with Hepa filters and UV lighting, and related supplies to create negative pressure rooms.

Justification: to provide care for the increased number of patients and protect the staff

- **Purpose:** to Provide negative air pressure rooms for treating Covid /flu
- **Other vendors considered/other quotes:** HepaCart (double the cost)

Cost to purchase: \$75,178.70

Budgeted: More information at the Board meeting

Recommendation: I would recommend the board approve this purchase for the increased surge in patients needing isolation rooms and staff safety.



INVOICE

Date: 10/15/2021 Order#: 32106

Bill To: (Customer ID#25358)

Ship To:

Humbolt General Hospital
 Rachel Meiron
 118 E. Haskell Street
 Winnemucca,, NV 89445
 United States
 775-623-5222 ext. 1711
 meironr@hghospital.org

Humbolt General Hospital
 Rachel Meiron
 118 E. Haskell Street
 Winnemucca,, NV 89445
 United States
 775-623-5222 ext. 1711

Payment Method:

Shipping Method:

Product Quote; Good for 30 Days

FedEx Ground®

Code	Description	Qty	Price	Total
OA1600PAC	OmniAire 1600PAC Air Filtration System with HEPA 99.99% @ 0.3 Micron with UV Light (200-1,600 CFM)	10	\$3,995.00	\$39,950.00
OG5C-M	OmniGuard 5 Cellular Differential Pressure Recorder	10	\$1,545.00	\$15,450.00
OAD12	Mylar Flexible Duct, 12" dia., 25 ft., wire reinforced	5	\$49.95	\$249.75
OAIM2000-12	Intake Manifold, durable ABS plastic, Size: 26"x20" with 12" dia. ring for flex duct	10	\$116.85	\$1,168.50
QCW12	Quick Clamp, 10-12" dia., stainless steel, worm drive, quick adjust	20	\$19.95	\$399.00
EG6000	8' x 2' Anteroom Type Enclosure with Adjustable Panels - 7'-10" - 10'-0"	5	\$3,246.00	\$16,230.00
^ EG3003	Closure Strips	60	\$0.00	\$0.00
^ EG4000	4' Panel Assembly	5	\$0.00	\$0.00
^ EG4002	2' Panel Assembly	5	\$0.00	\$0.00
^ EG4002.1	2' Panel Assembly with HEPA Filtered Air Discharge Port	5	\$0.00	\$0.00
^ EG4003	48" Panel with 44" Door - Lever Style Lockset	5	\$0.00	\$0.00
^ EG4004	Hinged Corner Assembly	10	\$0.00	\$0.00
^ EG4011	Panel Transport Cart	5	\$0.00	\$0.00

Subtotal: \$73,447.25

Tax: \$0.00

Shipping & Handling: \$1,731.45

Grand Total: \$75,178.70

IMPORTANT

*Please inspect carton's/containers for any visible or outward signs of damage and report to the carrier and to Spycor LLC immediately. Please open product immediately upon receipt and notify the shipper and Spycor LLC of any damage that may have been caused during shipping.

**Sales for negative air machines and PAC machines are considered final.

***All Sales Final: Equipment and consumables purchased from Spycor used for COVID-19 response are considered final. Spycor LLC will respect all manufacturer warranties.

Spycor LLC. 1121 Park West Blvd. Suite B-183, Mt. Pleasant, SC 29466
Phone: (877) 293-0784 support@spycor.com