

Confidential

**PRODUCT PRICING AGREEMENT
(Sole Source)**

THIS AGREEMENT is by and between the County of San Mateo through the San Mateo Medical Center (the "Hospital"), located at 222 W. 39th Avenue, San Mateo, CA 94403, facsimile number 650 573-2267, and HOWMEDICA OSTEONICS CORP., a New Jersey corporation (hereinafter referred to as "Stryker Orthopaedics") with a place of business at 325 Corporate Drive, Mahwah, NJ 07430 facsimile number 650-345-0481.

WHEREAS, Stryker Orthopaedics is engaged in designing, manufacturing, selling and distributing orthopaedic products; and

WHEREAS, Hospital wishes to receive from Stryker Orthopaedics as a consignee and to sell the orthopaedic products as provided herein; and

WHEREAS, Stryker Orthopaedics has offered certain price concessions and terms requested by Hospital, in consideration for certain assurances concerning volume and/or market share, term of agreement, payment terms, and other matters;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Definitions** - For purposes of this Agreement the term "Product" means all products and other items listed in the Stryker Orthopaedics' Product Catalogue(s) dated September 1, 2009/2010 (a copy of which has previously been provided to Hospital).
2. **Term** - The initial term of this Agreement (the "Initial Term") shall commence on September 1, 2010 and continue through August 31, 2013 (the "Expiration of the Initial Term"). The Hospital and Stryker Orthopaedics may renew this Agreement after the Initial Term for such renewal periods as may be mutually agreeable. The Hospital and Stryker Orthopaedics agree to begin negotiations to renew the Initial Term or any renewal term a minimum of 120 days in advance of expiration of the Initial Term or the expiration of any renewal term. In the event that the Initial Term or any renewal term expires before a new agreement is reached all Products will be billed at the expired agreement's prices plus 5% until a new pricing agreement is fully executed, not to exceed one year. The Initial Term and any renewal terms are referred to herein as the "Term." The Hospital and Stryker are under no obligation to enter into any renewal term.
3. **Consignment** - Product shall be consigned to Hospital as follows:
 - (a) Stryker Orthopaedics shall consign to Hospital such quantities of Product as Hospital and Stryker Orthopaedics shall mutually agree upon (collectively "Consigned Inventory as listed in Exhibit B").
 - (b) All Consigned Inventory shall remain the property of Stryker Orthopaedics until withdrawn and purchased by Hospital as herein provided; however, Hospital accepts all risk of loss and full responsibility for the condition of, any shortages in and the payment for all Consigned Inventory which may be used, opened, lost, or damaged. Hospital shall use reasonable efforts to (i) identify all Consigned Inventory as being the property of Stryker Orthopaedics, (ii) separate Consigned Inventory from other

property of Hospital, and (iii) maintain complete and accurate records concerning the Consigned Inventory.

(c) Hospital shall purchase items of Consigned Inventory as determined by Hospital. Within two (2) days of Hospital's withdrawal from consignment of any Consigned Inventory, Hospital shall issue to Stryker Orthopaedics a hard copy of a purchase order for such items. As Products are withdrawn from the Consigned Inventory, title shall pass to Hospital. A Purchase Order must be submitted within 48 hours after the Product has been used. This will help to assure Product availability. Implants that are opened but not used will be discounted by 50% of the list price at the time of order.

(d) Hospital must provide appropriate space to store and safeguard the Products. If the hospital can not provide such space the products will be delivered on a case by case basis with a courier charge of \$24.00 per procedure, which will cover the delivery and pick up expense.

(e) In consideration for the services and Products provided by Stryker Orthopaedics in accordance with all terms, conditions and specifications set forth herein and in exhibits A and B, County shall make payment to Stryker Orthopaedics based on the rates and in the manner specified herein. In no event shall the Hospital's total fiscal obligation under this Agreement exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000).

4. Instrumentation - Stryker Orthopaedics shall provide its orthopaedic surgical instruments ("Instrumentation") to Hospital as follows:

(a) The quantity of Instrumentation shall be as mutually agreed to by Hospital and Stryker Orthopaedics.

(b) Hospital shall have no ownership interest in the Instrumentation; however, Hospital is responsible for maintaining the Instrumentation in good condition and for using reasonable care in its handling and storage. Hospital shall be responsible for any loss of or damage to the Instrumentation and will be billed 50% of the Stryker Orthopaedics' list price in effect at the time of loss or damage. Disposable instruments shall be billed at 50% off list price in effect at time of order. Upon expiration or termination of this Agreement, Instrumentation shall be removed from Hospital and returned to Stryker Orthopaedics at Stryker Orthopaedics' expense.

(c) Instrumentation shall be provided by Stryker Orthopaedics on a loaned or consigned basis at no additional cost or expense to Hospital except as noted in the preceding paragraph. The Instrumentation provided is restricted for use with the Products only and is not separately reimbursable and has no independent value.

5. Educational Support - Stryker Orthopaedics shall provide to Hospital, at no additional expense or cost to Hospital, relevant surgical techniques, product information and other educational information (as generally made available by Stryker Orthopaedics) which are useful in connection with the proper use of the Products.

6. Prices for the Products - Purchase prices for the Products during the Term of this Agreement shall be based on Stryker Orthopaedics' price list in effect at the date of order of each Product, less discounts offered on Exhibit A, or subject to the CAP pricing indicated on Exhibit A. Discount or CAP pricing will remain in effect contingent upon Hospital's compliance with all of the terms set forth in Sections 3, 4, 7, 8, 11, and 14 (the "Pricing Basis Sections"), and compliance with all terms listed on Exhibit A. In the event Hospital does not comply with all of the terms of the Pricing Basis Sections and the terms listed on Exhibit A, pricing for the Products shall immediately (from the date of non-compliance) revert to the Stryker Orthopaedics' price list in effect at the time of such non-compliance, and Hospital agrees to pay

in accordance with that price list. If and when Stryker Orthopaedics confirms compliance with all of the terms of the Pricing Basis Sections and the terms listed on Exhibit A, then during the period of such compliance, pricing shall again be as set forth on Exhibit A, increased by an amount equal to the annual Company increase for that year (not to exceed 3%) as provided in written notice to Hospital by Stryker Orthopaedics.

7. Sole Source Contract Compliance- Hospital has agreed that it will purchase from Stryker Orthopaedics during each year of the Term of this Agreement ninety percent (90%) ("Sole Source Compliance Commitment Level") of Hospital's total needs for implant products which are the same or similar to the current implant Products, and for all technology, instrumentation, and services that could reasonably be deemed to be clinically efficacious substitutes for current implant Products. Hospital agrees that it will not reduce its purchases from Stryker Orthopaedics below the Sole Source Compliance Commitment level unless it can demonstrate a material, substantiated deficiency in the Stryker Orthopaedics implant products, technology, instrumentation or services, which is provided in writing to Stryker Orthopaedics within ten days from the date Hospital becomes aware that such a deficiency fails to meet Hospital's critical clinical efficacy requirements. Hospital's total needs for implant products which are the same or similar to the current implant Products and for all technology, instrumentation and services that could reasonably be deemed to be clinically efficacious substitutes for implant Products will be made on the basis of total dollars spent in the relevant year by Hospital to all vendors of relevant substitutes. Notwithstanding the ten day notice period listed in this paragraph, Hospital does not waive its right to terminate this agreement for good cause as defined in Clause 14 of this Agreement.
8. Shipment and Delivery - All Products purchased hereunder shall be shipped F.O.B. Stryker Orthopaedics' facility, freight prepaid; a shipping/handling fee in the amount of \$25 per shipment during the first year of the Term shall be added. Shipping fees during subsequent years will be negotiated prior to the anniversary date and adjusted accordingly to compensate Stryker Orthopaedics for the costs of shipment and handling. Additionally, Hospital agrees to pay a special shipping fee of \$50 for any elective procedures performed with less than 48 hours notice which require use of a courier or for any rush delivery requirement.
9. Invoices/Payments/ Reporting. Audit - Upon shipment (or in the case of Consigned Inventory, upon receipt of Hospital's purchase order-required within 48 hours after use) Stryker Orthopaedics shall submit to Hospital an invoice for such Product. Invoices shall be paid by Hospital net thirty (30) days, inclusive of all shipping and handling fees. If Hospital does not dispute an invoice within fifteen (15) days of receipt of same, the invoice will be deemed to have been approved by Hospital. Stryker Orthopaedics, as supplier, hereby informs Hospital, as buyer, of Hospital'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, (952h)).

Hospital agrees that its representatives will meet with representatives of Stryker Orthopaedics at least semi-annually during the Term, to review (i) volume, market share and other conditions on which pricing under this Agreement is predicated; (ii) payment records reflecting timeliness and amounts paid to Stryker Orthopaedics under all provisions of this Agreement; (iii) aggregated and blinded payment records reflecting purchases from and payments to other vendors of orthopaedic products similar to or the same as the Products; (iv) purchase order information; and (v) all other material aspects of the parties' performance under this Agreement. Hospital will provide accurate and complete data to Stryker Orthopaedics as reasonably requested by Stryker Orthopaedics to permit Stryker Orthopaedics to verify the basis for discount pricing to Hospital.

Stryker Orthopaedics reserves the right to physically inventory the consignment during business hours upon 24 hours notice to Hospital. In the event that Stryker Orthopaedics' audit of the Consigned Inventory at the Hospital concludes that inventory is missing, Hospital agrees that it shall pay to Stryker

Orthopaedics any monies which are due and owing based on the missing inventory. In the event that Stryker Orthopaedics' audit of the Consigned Inventory at the Hospital concludes that a surplus exists, Stryker Orthopaedics agrees that it shall either credit Hospital for any monies which have been overpaid based on said surplus or allow Hospital to return to Stryker Orthopaedics the surplus inventory. Hospital and Stryker Orthopaedics agree to meet within fifteen (15) days after an audit of the inventory has been taken by Stryker Orthopaedics, to resolve whether a surplus or a shortfall exists.

10. Warranty - Stryker Orthopaedics warrants that each Product, upon shipment from Stryker Orthopaedics, meets Stryker Orthopaedics' design and manufacturing specifications and, if labeled as sterile, meets Stryker Orthopaedics' specifications for sterilization. Due to the numerous factors involved in the shipment and delivery of the Product, the implantation of the Product, including surgical technique and operative conditions, as well as internal and external biological and biomechanical considerations relevant to the recipient, except as set forth in the immediately preceding sentence, Stryker Orthopaedics hereby expressly disclaims any and all express or implied warranties regarding the Products and the Instrumentation including, but not limited to, merchantability and fitness for a particular purpose. Warranties for Stryker Orthopaedics Products, and limitation on warranties, are contained in the Product literature. In no instance will Stryker Orthopaedics be liable for incidental or consequential damages.
 11. Liability. Stryker Orthopaedics agrees to indemnify and hold harmless Hospital from any liability and/or damages which Hospital or its patients may suffer directly as a result of a defect in workmanship or design of the Products, Consigned Inventory or Instrumentation. This indemnification applies only if the instructions outlined in the labeling, manual, and/or instructions for use are followed. This indemnification does not apply to liability arising from: (i) an injury due to the negligence of any person other than an employee or agent of Stryker Orthopaedics; (ii) the failure of any person other than an employee or agent of Stryker Orthopaedics to follow any instructions for use of the Product, Consigned Inventory or Instrumentation; or (iii) the use of any product not purchased from Stryker Orthopaedics, or Product, Consigned Inventory or Instrumentation that has been modified, altered, reprocessed, or repaired by any person other than an employee or agent of Stryker Orthopaedics. Stryker Orthopaedics is not responsible for any losses or injuries arising from the selection, manufacture, installation, operation, condition, possession or use of the Products, Consigned Inventory or Instrumentation except as otherwise permitted under this paragraph. Hospital agrees to hold Stryker Orthopaedics harmless from and indemnify Stryker Orthopaedics against any claims or losses or injuries arising from (i), (ii), or (iii) above resulting from the negligence or willful misconduct of any Hospital employee or agent
 12. Insurance. Stryker Orthopaedics will maintain adequate general liability insurance, including coverage for Products and completed operations, and workers compensation and employer's liability insurance against any claim or claims which might arise out of Products purchased by Hospital from Stryker Orthopaedics under the Agreement. Stryker Orthopaedics has the right to self insure to comply with this requirement. Upon request Stryker Orthopaedics will furnish an insurance certificate signed by an authorized agent evidencing the above referenced insurance coverage prior to the execution of this Agreement.
- Hospital agrees to maintain in force during the Term of this Agreement appropriate property insurance on the Products, Consigned Inventory and Instrumentation, to provide coverage against loss by theft, fire damage, acts of nature or other cause. Upon request by Stryker Orthopaedics, Hospital will provide a certificate of insurance evidencing such coverage, which will name Stryker Orthopaedics as a named insured and loss payee, as its interests may appear.
13. HIPAA. Stryker Orthopaedics agrees not to use or further disclose any protected health information, as defined in 42 C.F.R. Part 164, or individual health information as defined in 42 C.F.R. Part 142 (collectively, the "Protected Health Information"), concerning a patient other than as permitted by this

Agreement and the requirements of the federal privacy regulations as contained in 42 C.F.R. Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 42 C.F.R. Part 142 (the "Federal Security Regulations"). At such time as federal law or regulations require the implementation of provisions stemming from the Health Insurance Portability and Accountability Act, Stryker Orthopaedics will implement appropriate safeguards to prevent the use or disclosure of a patient's Protected Health Information other than as provided for by this Agreement. Stryker Orthopaedics will promptly report to Purchaser any use or disclosure of a patient's Protected Health Information not provided for by this Agreement of which Stryker Orthopaedics becomes aware. In the event Stryker Orthopaedics, with Hospital's approval, contracts with any Stryker Orthopaedics' agents to whom Stryker Orthopaedics provides a patient's Protected Health Information received from Hospital, Stryker Orthopaedics shall include provisions in such agreements whereby the Stryker Orthopaedics' agent agrees to the same restrictions and conditions that apply to Stryker Orthopaedics with respect to such patient's Protected Health Information. Stryker Orthopaedics will make its internal practices, books, and records relating to the use and disclosure of a patient's Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by Stryker Orthopaedics or Purchaser by virtue of this Section.

14. Termination - This Agreement may be terminated by either party, without cause, upon thirty (30) days' written notice to the other party. The Hospital may also terminate this Agreement based upon unavailability of Federal, State or County funds by providing written notice to Stryker Orthopaedics as soon as is reasonably possible after the Hospital learns of said unavailability of outside funding.

Upon termination of this Agreement for any reason, Hospital shall, within ten (10) days after the effective date of the termination, deliver as directed by Stryker Orthopaedics all Products and Instrumentation then in its possession or control, and pay Stryker Orthopaedics all amounts owed pursuant to this Agreement. This agreement shall automatically terminate upon closure of the County of San Mateo or San Mateo Medical Center.

15. Confidentiality - Each party hereto shall hold in strictest confidence any information and materials which are related to the business of the other party or are designated by such party as proprietary and confidential, herein or otherwise. The parties hereby covenant that they shall not disclose such information to any third party without prior written authorization of the party to whom such information relates or as otherwise required by law.

16. Miscellaneous

(a) 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.

(b) The validity of this Agreement and of its terms and provisions, as well as the right and duties of the parties hereunder, the interpretation, and performance of this agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

(c) This Agreement shall inure to the benefit of, and be binding upon, Hospital and Stryker Orthopaedics and their respective successors and assigns. However neither party may assign this Agreement without prior written consent of the other.

- (d) Any notice required under this Agreement shall be in writing addressed to the parties at their respective addresses as first set forth above, sent both by (1) registered mail, postage prepaid, and (2) facsimile.
- (e) This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and has priority over all documents, verbal consents or understandings made between Hospital and Stryker Orthopaedics before the conclusion of this Agreement with respect to the subject matter hereof, including any group purchasing agreements to which Hospital may be a party. None of the terms of this Agreement shall be amended or modified except in writing signed by the parties hereto.
- (f) The provisions of Sections 3, 4, 6, 7, 8, 9, 10, 11, 15, and 16 of this Agreement shall survive its termination or expiration.
- (g) The following exhibits and attachments are included hereto and incorporated by reference herein:
Exhibit A - Pricing, Volume and Other Terms and Conditions
Exhibit B - Inventory
- (h) Stryker Orthopaedics agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the Hospital or County of San Mateo and that Contractor acquires none of the rights, privileges, powers, or advantages of employees of the County of San Mateo.
- (i) Stryker Orthopaedics shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without prior written consent of the Hospital. Any such assignment or subcontract without the Hospital's written consent shall give the Hospital the right, at its option, to automatically and immediately terminate this Agreement without the need to comply with notice provisions mentioned
- (j) Retention of Records, Right to Monitor and Audit:

Stryker Orthopaedics shall maintain all required records for three (3) years after the Hospital makes final payment and all other pending matters are closed, and shall be subject to the examination and/ or audit of the County of San Mateo, a Federal grantor agency, and the State of California.

Reporting and Record Keeping: As may be applicable, Stryker Orthopaedics shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by the County of San Mateo.

As maybe required by law, Stryker Orthopaedics agrees to provide the County of San Mateo to any Federal or State department having monitoring or review authority, to the Hospital's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance, in the performance of services under this Agreement, with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date written below.

STRYKER ORTHOPAEDICS

County of San Mateo
San Mateo HOSPITAL + medical Center

By: Craig S. Rooba
Title: National Accounts Manager
Date: 10/29/10

By: _____
Title: President, Board of Supervisors,
San Mateo County
Date: _____

ATTEST:

By: _____
Clerk of Said Board

Exhibit A – Pricing, Volume, and Other Terms and Conditions

Product Price Discount or CAP Pricing arrangements:

For primary hip and knee purchases up to \$500,000.00:

25% off primary knee implants

25% off primary hip implants

For primary hip and knee purchases over \$500,000.00

30% off primary knee implants

30% off primary hip implants

All other products (any volume)

10% off revision

10% off bone cement

10% off trauma

10% off shoulder

Volume, market share and other conditions:

San Mateo Medical Center shall utilize Stryker Orthopaedics as a 90% sole source supplier for all orthopaedic implant needs.

New Technology:

New technology, defined as any new product or technology made available to the hospital within the last three years, will be discounted under "all other products" at the 10% discount

Other Terms and Conditions:

None.

EXHIBIT B - Inventory

Consigned Inventory
None.