



Edwards

Service Agreement
Terms And Conditions For Service Plan
(Hemosphere 360 Protection Service)

This Service Agreement (with its attachments, the "Agreement"), is entered into by and between Edwards Lifesciences LLC ("Edwards") and "Customer" for the equipment purchased by Customer as more specifically set forth in Appendix A to the Quote for Customer, hereinafter (the "Equipment").

The Equipment is warranted by Edwards for a period of one (1) year from the date of purchase in accordance with the terms and conditions of the Sales Agreement previously entered into between Edwards and Customer (the "Sales Agreement").

After that warranty period ends, and in consideration for payment of the Service Fee, Edwards' obligations under this Agreement shall be to provide service during the Service Period (defined below) and updates and upgrades to the Equipment software in accordance with the following terms, scope, conditions, limitations, exceptions and definitions set forth in this Agreement.

1. **Definitions.** Capitalized terms that are not defined in this Agreement shall have the same meaning as those set forth in the Sales Agreement.
 - (a) **"Covered Equipment"** means the Equipment listed on Appendix A found to be defective under normal use and service (i.e., not fit for use for the purposes and indications described in the labeling when used in accordance with the directions for use). Covered Equipment does *not* include any Equipment that (1) has been disassembled, opened, repaired or altered by persons other than Edwards or its authorized representatives, (2) has been used beyond its "Useful Life" dates as indicated, where applicable, on the Equipment's labeling; (3) has had its labeling or serial number removed; (4) had pre-existing damage or reported or unreported failures prior to execution of this Agreement; or (5) has not been properly maintained by Customer per the operator's manual or IFU.
 - (b) **"Effective Date"** means the earlier to occur of (1) the date when the parties execute a Purchase Document for the Initial Term of the Agreement, subject to provision of payment or (2) the Customer remits payment for the Initial Term of the Agreement.
 - (c) **"Purchase Document"** means Edwards' purchase acknowledgement document or other document in which Edwards and the Customer acknowledge the Customer's purchase of the service plan under this Agreement.
 - (d) **"Replacement Equipment"** means new or refurbished equipment or parts provided by Edwards to Customer in exchange for Covered Equipment. Although refurbished to factory functional



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standards, the Replacement Equipment may not be equivalent in appearance to the Covered Equipment returned to Edwards for repair, service or exchange.

2. Term

- (a) Term – The term for this Agreement shall continue for the duration of the term purchased as set forth on Appendix A (the “Initial Term”), unless terminated earlier as provided herein. This Agreement may renew for successive one (1) one year periods upon mutual agreement (each a “Renewal Term”) unless Edwards gives notice to Customer that such Covered Equipment becomes discontinued, obsolete or out of service. The Initial Term and any subsequent Renewal Term shall be referred to as the “Service Period.”
- (b) Termination by Edwards – Edwards may terminate this Agreement upon five (5) days written notice to Customer for any material breach of this Agreement by Customer. The parties acknowledge and agree that material breaches include, but are not limited to, (1) fraud, (2) material misrepresentation, (3) failure to allow Edwards to provide software Updates to Equipment (as further described in Section 6 herein), (4) failure to return Equipment as described in Section 5(c) herein, and/or (5) failure to pay applicable fees under this Agreement. Upon Edwards’s termination as described in this section, Customer will not receive a refund of any fees already paid.

3. **Service in General.** Subject to Sections 6-8 below, Edwards will repair or replace any Covered Equipment returned to Edwards in accordance with the terms of this Agreement. The decision of whether to repair or replace Covered Equipment (or a part thereof) or to use a new or refurbished part will be made by Edwards, in its sole discretion.

4. **Representation by Customer.** Customer represents that the Equipment is in good working order and has not been involved in any reported complaint event prior to the Effective Date.

5. Scope of Services

- (a) This Agreement covers the costs of parts, labor and return shipping costs (from Edwards to Customer), to repair Covered Equipment at an authorized service center. Customer is responsible for all shipping charges from Customer’s location to the service center identified by Edwards.
- (a) Edwards may, at its option, satisfy its service responsibility by providing Customer with Replacement Equipment in exchange for the Covered Equipment. Replacement Equipment may be provided to Customer on a permanent basis or on a temporary basis during the time required to repair Covered Equipment.
- (b) When Replacement Equipment is accepted by Customer, Customer no longer owns the Covered Equipment and is responsible for returning the covered Equipment to Edwards within ten (10) business days from the delivery of the Replacement Equipment. Upon acceptance by Customer, this



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Agreement will transfer to the Replacement Equipment for the duration of the Service Period. If Customer's original make and model is no longer available, the Customer will receive comparable Replacement Equipment. If Customer does not return the Covered Equipment to Edwards' designated return location within ten (10) business days from delivery of the Replacement Equipment, Customer agrees to be billed for the current List Price of the Replacement Equipment provided.

- (c) Materials used by Edwards in the repair or replacement of Covered Equipment will be on an exchange basis and all removed materials will become Edwards's property.
- (d) All repairs will be performed at an Edwards authorized Service Center by qualified service technician or other authorized representative using new or factory refurbished parts. Edwards will not reimburse Customer for services that are performed by any party other than an Edwards authorized Service Center. If a party other than an Edwards authorized Service Center disassembles, opens, repairs, alters Equipment or breaks the internal warranty seals of Equipment, Edwards may, in its sole discretion, immediately terminate this Agreement upon written notice to Customer.
- (e) Edwards does not authorize any person or entity to create for it any other obligations of liability in connection with this Agreement.
- (f) Edwards cannot guarantee next business day replacement on weekends, company holidays, after 2:00 pm Pacific Time each work day or for circumstances beyond Edwards's control (such as carrier strikes, delivery service interruptions, regional holidays, severe weather, etc). Edwards also cannot guarantee next business day replacement to locations for which FedEx service is not available.
- (g) Any external identification (such as, for example, Customer labels and stickers) sent with the Covered Equipment by Customer to Edwards for repair (or preventive maintenance, if applicable to this Agreement) will not be returned to Customer.

6. **What the Customer Must Do.** In order to be entitled to receive the service you must do the following.

- (a) **Troubleshoot with Edwards.** Customer is required to reasonably troubleshoot with Edwards's Technical Support personnel to verify the nature of the problem before returns for repairs are authorized by Edwards. Service may be refused if Customer is unwilling to provide detailed information about the failure or isolate defective components or Equipment from hospital inventory.
- (b) **Maintenance.** Do regular maintenance as prescribed in the operator's manual or Instructions For Use ("IFU").
- (c) **Software and Technology Expansion Updates.** During the Service Period, software updates (bug fixes, performance optimization etc.) and technology expansion upgrades to the Equipment's



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software may become available from time to time. Customer agrees that Edwards has the right to access the Equipment upon reasonable prior notice to install any and all such updates and/or upgrades. If Customer does not permit Edwards to update the Equipment in a timely fashion, Edwards may void the Equipment's warranty and/or terminate this Service Agreement. Refunds will be limited to prorated service fees and will have actual costs of service rendered deducted from refund amount.

- (d) **Customer Responsibility for Shipping.** Customer must return the Equipment at Customer's expense, via freight shipping on an Edwards issued Returned Materials Authorization ("RMA") to the location indicated by Edwards. Information regarding the specific nature of each failure and detailed description of logged messages is required prior to the issuance of an RMA from Edwards Technical Support.
- (e) **Disposable Products.** Customer agrees to use only Edwards's disposable products with Equipment. Edwards can make no guarantee to the accuracy and validity of the parameters displayed by a Monitor when used with the disposables other than genuine Edwards's disposable products. Use of non-approved sensors will have the effect of immediately terminating this Agreement. If Customer uses any disposable products that are not genuine Edwards products in connection with Edwards's clinical platforms or Edwards's Equipment, then Customer will indemnify, defend and hold harmless Edwards, its affiliates, shareholders, directors, officers, employees, successors, and assigns from and against all claims, liabilities, losses, damages, liabilities costs and expenses (including reasonable attorneys' fees and expenses and court costs) arising from or related to any actual or alleged death or bodily injury to any individual arising from or related to the use of such third party product.

7. Exceptions.

- (a) Preventive Maintenance ("PM") is not covered unless Appendix A has identified PM as purchased by Customer for certain ClearSight Equipment.
- (b) Cables, accessories (i.e. carts, mounting adapters, patient cables, slave cables and CO-Set Probes), disposable products and software are specifically excluded from coverage under this Agreement; and Edwards is not responsible for returning such accessories or products that are sent to Edwards. Only associated cables that are less than 3 years old and are listed by serial number in Appendix A to the Quote are included under this Agreement; and, Customer will be charged for a new cable if the cable sent to Edwards is older than 3 years old and/or not listed by serial number in Appendix A to the Quote.
- (c) Also excluded from coverage is any Equipment where the claim, in Edwards's sole opinion, arises out of:
 - i. accident, theft, misuse, abuse or neglect;



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- ii. use of the Equipment outside of normal operating conditions, specifications, or environment or in a manner not authorized by Edwards
- iii. lack of routine care or maintenance as indicated in any Edwards operating or maintenance instructions;
- iv. failure to use or take any proper precautions under the circumstances;
- v. user modification of any Equipment;
- vi. computer viruses and other changes to the operating system or environment which adversely affect the applicable Equipment;
- vii. defects, problems, or failures created by third party products (except those comprising parts or components of Edwards's products) or their interface with Edwards's products;
- viii. Force Majeure Events, and
- ix. latent defects discovered after the expiration of the Service Period.

Customer agrees to be billed and pay Edwards's prevailing rates for requested services not covered by this Agreement.

8. **Specific Limitation on Monitor Replacement.** For each Monitor, service under this Agreement is limited to a maximum of one (1) replacement for each Monitor covered within any twelve (12) month period beginning from the date of the first replacement. The first Monitor replacement will be replaced free of charge, and the second replacement requested within the twelve (12) month duration will be subject to a fee of \$1,500 USD. Any additional requests will be charged at Edwards's then-current prevailing rates for repair or replacement.
9. **Charge for Matters Not Covered.** Edwards is obligated to provide service only within the terms stated in this Agreement. Any labor, parts or expense used or incurred by Edwards to provide service beyond these terms shall be paid for by you at Edwards's then-current prevailing rates. Edwards shall invoice you in such case and each invoice is due 30 days from receipt.
10. **Service Fee.** The fee for the services provided under this Agreement shall be as indicated on the Quote (the "Service Fee"). The Service Fee is due and payable at the beginning of the Initial Term and at the beginning of any Renewal Term.. Edwards shall invoice Customer upon receipt of a purchase order and in advance of any Renewal Periods in accordance with each order. If any issuance of a purchase order or amount due and owing by Customer hereunder is thirty (30) or more days overdue, Edwards may, without limiting its other rights and remedies, suspend all Services to Customer until such amounts are paid in full. Edwards shall give Customer at least ten (10) days' prior notice that its account is overdue before so suspending Services. The Service Fee is non-refundable.



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11. **Limited Warranty.** Edwards shall perform its services hereunder in a workmanlike manner. Edwards's obligation to repair any defects in the Equipment shall be limited to the terms of this Agreement. EDWARDS MAKES AND THE CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND EDWARDS SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. **Limitation of Liability; Exclusion of Consequential Damages.** IN NO EVENT SHALL EDWARDS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO SUCH CLAIM, NOT TO EXCEED THE MANUFACTURER'S RETAIL PRICE FOR THE APPLICABLE EQUIPMENT. IN NO EVENT SHALL EDWARDS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES OF ANY NATURE IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES OR SOFTWARE PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR: LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA STORAGE, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF EDWARDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Assignment.** This Agreement is assignable by Customer to a successor owner, as long as the Equipment remains the property of the successor owner, coverage will continue.
14. **Survival.** The parties agree that the obligations under Sections 12 and 15-23 shall survive termination or expiration of this Agreement.
15. **Force Majeure.** The obligations of either party to perform under this Agreement shall be excused during each period of delay caused by matters (not including lack of funds or other financial causes) such as strikes, utility interruptions, shortages of raw materials, government orders acts of God or other circumstances that are reasonably beyond the control of the party obligated to perform (each a "Force Majeure Event"). Each party shall nonetheless use commercially reasonable efforts to recommence performance as soon as reasonably practicable.
16. **Notices.** All notices or other communications required to be given hereunder shall be in writing and shall be delivered by personal delivery, mail, courier, or facsimile to the address or facsimile number of the other party set forth on the Purchase Document. Notice shall be deemed given based on any one of the following notification methods: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. A party may change its address for notice by delivering to the other party written notice.
17. **Applicable Law; Jurisdiction.** This Agreement shall be construed according to the laws of California without regard to its choice of law principles. For purposes of all claims brought under this Agreement, each of the



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parties hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Orange County, California.

18. **Attorney's Fees.** The prevailing party in any action to enforce this Agreement shall be entitled to recover costs and expenses, including attorneys' fees.
19. **Entire Agreement; Modification and Waiver.** These terms and conditions and the Quote to Customer are the entire agreement between Edwards and the Customer relating to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way. This Agreement may be amended only by a writing executed by the Customer and Edwards. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance anytime thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any subsequent breach of the same provision or any other provision.
20. **Purchase Order Terms.** The terms stated in this Agreement and the Quote to Customer are the exclusive terms regarding the Customer's rights and obligations with respect to the services provided hereunder. Any inconsistent or conflicting terms or conditions stated in any purchase order, acknowledgement or invoice shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or modify any term expressed in the Agreement. The issuance of a purchase order and/or payment of an invoice by the Customer shall constitute full and unconditional acceptance and acknowledgement of this Agreement and its terms by the Customer.
21. **Severability.** If any of the provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.
22. **No Third Party Beneficiaries.** This Agreement is intended solely for the mutual benefit of the parties hereto and there is no intention, expressed or otherwise, to create any rights or interests for any other party or person other than the parties.
23. **Language.** The official version of this Agreement is in the English language and this Agreement will be construed in accordance with this version. Translations of this agreement into any other language are for the purpose of accommodation only and shall be of no legal effect.