



Partners in Care™

**COMPREHENSIVE PARTNERSHIP SUPPORT AGREEMENT**

Welch Allyn, Inc. or the undersigned WA entity (“WA”) and the undersigned Customer agree to the terms and conditions of this Comprehensive Partnership Support Agreement (“Agreement”) as of the Effective Date identified in the signature block.

**SCOPE OF SERVICE**

During the term of this Agreement (as defined in Exhibit A), WA will provide maintenance and diagnosis/repair services (parts and labor) for the devices and equipment identified in Exhibit A (“Covered Devices”) as described below (the “Services”). This Agreement does not cover replacements for disposable items used with Covered Devices, including, for example, paper, electrodes, spirometer mouthpieces, wireless connectivity, bar code readers, or carts. This Agreement is in addition to any WA standard warranty applicable to the Covered Devices.

The Services include:

- phone support during business hours on WA's business days;
- updates of the software that is incorporated into the Covered Device (“Software”), including Software essential to systems functionality (“Embedded Software”) and Software essential to hardware operation (“Firmware”);
- loaner devices as applicable;
- annual calibration\*;
- remote diagnosis and repair;
- direct access to the Partners in Care Technical Support Center;
- accessory replacement;
- expedited turnaround times for repairs;
- shipping costs; and
- WA clinical education.

If this Agreement is not purchased at the time that the Covered Devices are purchased, WA reserves the right to inspect the Covered Devices and condition the sale of the Agreement on Customer's payment of a preliminary fee in consideration of any re-conditioning of the Covered Devices (including Software Updates, defined below) required by WA.

**SERVICE DESCRIPTIONS**

**Request for Services**

Customer shall use the WA website to request a Return Materials Authorization (“RMA”) prior to sending a Covered Device into the WA repair site. In the event of a problem accessing or using the WA website, Customer should call the priority number listed on the welcome letter.

For calibration or repair services requests, or to check the status of one, the URL is:

<http://www.welchallyn.com/customer-self-service.htm>

\* Annual calibration is included only where Customer purchases an Agreement specifically providing same (“Comprehensive plus Calibration”). Where Customer does not purchase a Comprehensive plus Calibration Agreement, WA will provide calibration upon Customer's request at WA's standard fee then in effect.

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**Software Updates**

Customer is entitled to access applicable updates to Software, including corrections of reproducible errors and improvements in performance (“Software Updates”). Applicable Software Updates will be determined by WA in its sole discretion. Software Updates and related documentation, if any, will be made available via electronic download or such other means as WA may elect. If Firmware is pre-installed by WA, WA will provide Software Updates for such Firmware at the time of service. Customer should consult the Covered Device documentation to determine whether Firmware is already installed on the Covered Device and, if not, whether Firmware may be installed by Customer.

This Agreement excludes new versions of Software that provide additional functionality and/or significantly improve the existing version (“Software Upgrades”).

**Hardware Upgrades**

This Agreement excludes adding capacity to the physical components of the Covered Device, whether such hardware is internal or external (e.g., installation of new physical components that provide extra capability) (“Hardware Upgrades”).

**Loaners**

A temporary replacement device (“Loaner”) will be provided free of charge when repair of a Covered Device at a WA facility is required at any time during the term of this Agreement. Loaners will not be provided for Covered Devices requiring routine calibration.

**Calibration**

If this Agreement is a Comprehensive plus Calibration Agreement, WA will provide calibration for Covered Devices each 12-month period of the term hereof as set forth in Exhibit A. WA will provide calibration of Covered Devices that have already received the annual calibration(s) set forth in Exhibit A at WA’s standard fee then in effect.

*Standards and Methods*

WA shall calibrate Covered Devices to the specifications provided in the applicable Directions for Use and Service Manual in accordance with standard operating procedures.

*Calibration Certificate*

For each Covered Device that is calibrated, WA shall provide Customer with a calibration certificate that includes the following:

- model number and serial number;
- date of calibration; and
- official signature.

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**Remote Diagnosis and Repair**

Upon Customer's request, and if and to the extent available, WA will perform remote examination of known issues associated with a Covered Device through a Customer-provided gateway and/or through the use of WA technology.

Customer is responsible for providing an internet connection that WA may access to link to the Covered Device. Where Customer is unable to provide an internet connection, WA will attempt to deliver diagnosis and repair services via the telephone.

WA will use reasonable efforts to develop error corrections for errors reported by Customer that are duplicated by WA on its own device. WA may provide an initial error correction as a temporary work-around or patch, and then provide a subsequent permanent error correction via Software Update.

**Direct Access to the Partners in Care Technical Support Center**

Customer will have direct access to the Partners in Care Support Center via a dedicated toll-free telephone number. Customer must provide the number of this Agreement and the serial number of the Covered Device in order to receive assistance from the Partners in Care Support Center.

**Accessory Replacement**

WA will replace, free of charge, up to 1 accessory per Covered Device each 12-month period of the term of this Agreement where such accessory fails or is damaged after expiration of the applicable warranty period. Customer will be required to return the failed or damaged accessory in order to receive the replacement accessory. A list of accessories eligible for replacement pursuant to the foregoing is available at the URL: <http://www.welchallyn.com/apps/PICAccessoryCoverage/landing.jsp>

**Expedited Turnaround Times**

WA will use reasonable efforts to repair a Covered Device and return it to Customer within 5-7 business days (excluding WA holidays) from the date of its receipt by WA.

WA reserves the right in its sole discretion to adjust turnaround time based on Customer's geographic location. All turnaround times are subject to conditions beyond WA's control.

**Shipping Costs**

WA will cover costs for:

- shipment of malfunctioning Covered Device(s) from Customer to WA and return shipment of repaired Covered Device(s) from WA to Customer;
- shipment of Covered Device(s) for calibration from Customer to WA and return shipment of calibrated Covered Device(s) from WA to Customer (if this is a Comprehensive plus Calibration Agreement);
- shipment of Loaner from WA to Customer and return shipment of Loaner from Customer to WA; and
- shipment of replacement accessories from WA to Customer and return shipment of failed or damaged accessories from Customer to WA.

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Transit times for shipments may vary by location and delivery times are estimates only.

**WA Clinical Education**

WA will provide Customer access to select online clinical education modules available either on the WA website or via a third party provider as determined by WA in its sole discretion. Such modules are designed to help improve Customer competency during each 12-month period of the Agreement. All modules are subject to availability and made available in English language only.

**ACCIDENTAL DAMAGE**

Accidental damage is excluded from this agreement. Customer may seek repair of Covered Devices in the event of Accidental Damage at WA prevailing rates. "Accidental Damage" means, as determined by WA in its sole discretion, damage attributable to handling and failures that occur during normal use and operation of the Covered Device in accordance with WA's written instructions in an appropriate functional environment. WA will inspect Covered Devices returned for repair to rule out Excluded Causes (defined below) and confirm Accidental Damage. Covered Devices with Accidental Damage may be repaired only; this Agreement excludes replacement of Covered Devices with Accidental Damage. If WA determines that repair is impractical or unreasonable, WA will, at Customer's option, return the Covered Device to Customer. Customer is solely responsible for all data stored on Covered Devices; this Agreement excludes any data recovery or transfer services.

**EXCLUSIONS**

This Agreement does not cover damage to Covered Devices caused by or resulting from, in whole or in part, the following as determined by WA in its sole discretion:

- modification or attempted modification of a Covered Device (including Software) by anyone other than WA or a WA authorized service provider;
- misuse or improper use of a Covered Device including, without limitation, failure to follow WA's written use and maintenance instructions and/or site specifications; use of the Covered Device for a purpose other than which it was designed; theft or loss of the Covered Device; intentional breakage or vandalism; cosmetic impairment (e.g., scratches, dents); or Acts of God, fire, water, wind, earthquakes, lightening, other natural disasters and/or weather/environmental conditions, war, nuclear incident, terrorism, transportation of Covered Devices, electrical wiring at site, electrical surges, sags, or spikes, liquid submersion, rust and corrosion, and pest infestation; or
- use of non-WA accessories and/or replacement parts.

**FEES AND PAYMENT**

The fee for Services for the full term of the Agreement may be paid in its entirety in advance of the first 12-month period or in annual installments in advance of each 12-month period of the term of the Agreement, and is not refundable except as expressly provided herein. The fee for Services does not include any applicable sales, use, GAT, or similar excise taxes, which shall be paid by Customer. Customer shall pay the invoice for the fee for Services within 30 days of the date shown on such invoice.

**RENEWAL AND TERMINATION**

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WA may, in its sole discretion, elect to renew the term of the Agreement by sending Customer an invoice for the fee for Services payable, as applicable, for the full renewal term or the initial 12-month period of the renewal term. This Agreement will expire if Customer does not pay the renewal invoice when due. The renewal term of this Agreement may be of lesser duration than the initial term or the previous renewal term, as applicable, where the Covered Devices have been deemed by WA, in its sole discretion, to be end-of-life product subject to a limited period of continuing support.

Either party may terminate this Agreement if:

- a) the other party fails to cure any material default within 30 days after written notice of the default is sent by the non-defaulting party; or
- b) the other party becomes subject to bankruptcy proceedings. Termination will become effective on the date specified in the notice that is sent to the defaulting party by the non-defaulting party.

Customer may terminate this Agreement for its convenience subject to the following conditions:

- a) Customer must provide written notice to WA no fewer than 60 days prior to the end of the then-current 12-month period of the then-current term of the Agreement.
- b) No termination for convenience can take effect during the then-current 12-month period of the then-current term of the Agreement; only the 12-month periods following the then-current 12-month period of the then-current term of the Agreement (if any) can be terminated.
- c) Where Customer paid the fee for Services for the full term of the Agreement in its entirety, WA will refund to Customer the pro-rata portion of such fee corresponding to the number of 12-month periods for which Services will not be provided, provided, however, that Customer will be assessed the full list price of the Agreement (all discounts applied to Customer's original quote, if any, will be removed) prior to calculation and issue of such refund.
- d) Where Customer pays the fee for Services on an annual installment basis, WA will not invoice Customer for the next 12-month period ordinarily payable hereunder, provided, however, that Customer will be assessed the full list price of the Agreement (all discounts applied to Customer's original quote, if any, will be removed) and invoiced for the difference between the full list price and the price Customer paid for each year the Agreement was in effect.

**CHANGE OF SERVICES**

WA reserves the right to change the Services (including the right to change authorized service providers contracted by WA to provide Services hereunder, if any) on 60 days' notice to Customer, provided, however, that if such change materially reduces the level of Services as reasonably determined by WA, WA will give Customer the option:

- a) to continue the Services and accept a credit toward the fee for Services payable for, as applicable, the next renewal term of this Agreement or the next 12-month period of the then-current term of this Agreement in an amount proportionate to the reduction in Services in, respectively, the then-current term or the then-current 12-month period of the then-current term, which amount will be in WA's sole discretion; or
- b) to terminate this Agreement and receive a pro-rata refund of any prepaid fee for Services corresponding to the period of time in, as applicable, the then-current term or the then-current 12-month period of the then-current term for which Services will not be provided.

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Where WA elects to discontinue the manufacture or sale of a Covered Device, or to stop support of the current version of Software, WA will continue to provide Services hereunder until the date indicated in the discontinuation or end of support life notice sent to Customer and/or published on WA's website.

**WARRANTY**

WA shall perform Services hereunder in a reasonably timely, professional, and workmanlike manner using trained and qualified personnel capable of performing Services in accordance with industry standards.

WA does not warrant that Software will operate uninterrupted, or that it will be free from minor defects or errors that do not materially affect its performance, or that the applications contained therein are designed to meet all of Customer's requirements. WA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**CONFIDENTIALITY**

Each party shall maintain in confidence all confidential information of the other party identified by such party as commercially sensitive, proprietary, confidential, or trade secret, whether or not marked "confidential" or other similar legend, and shall not disclose such confidential information to any third party at any time except to those of its personnel or agents as are necessary in connection with such party's activities as contemplated by this Agreement and who are bound by confidentiality obligations with such party at least as restrictive as those contained herein. In maintaining the confidentiality of the confidential information of the other party, each party shall exercise the same degree of care that it exercises to prevent the unauthorized use, dissemination, or publication of its own confidential information and in no event less than a reasonable degree of care. Both parties shall ensure that each of its personnel and agents holds in confidence and makes no use of the confidential information of the other party for any purposes other than those permitted under this Agreement or otherwise required by law. Neither party shall reverse engineer, disassemble, or decompile any products, prototypes, software, or other tangible objects that embody confidential information of the other party. If in the course of performing this Agreement WA obtains access to health information stored in a Covered Device that identifies patients ("Protected Health Information"), WA will employ commercially reasonable procedures to provide security for such Protected Health Information and prevent the unauthorized access of or disclosure of such Protected Health Information in conformity with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPPA").

**LIMITATION OF LIABILITY**

Customer's sole and exclusive remedies for any damages or loss connected with any Services furnished by WA hereunder shall be, at WA's sole option:

- a) re-performance of such Services; or
- b) credit or refund of any prepaid fee for Services in an amount corresponding to such Services.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES RESULTING FROM ANY DEFAULT IN PERFORMANCE OF THIS AGREEMENT. NOT BY WAY OF LIMITATION TO THE FOREGOING, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES RESULTING FROM ANY DEFAULT IN PERFORMANCE OF THIS AGREEMENT

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IN AN AMOUNT GREATER THAN THE FEE FOR SERVICES PAYABLE BY CUSTOMER FOR THE 12-MONTH PERIOD PRECEDING THE DATE SUCH DAMAGES OCCURRED.

**GENERAL PROVISIONS**

This Agreement shall be governed by and construed under the laws of the State of New York without reference to its conflicts of law principles. Any delay or nonperformance of any provision of this Agreement (other than payment of fees for Services due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. The provision of Services hereunder is limited to Customer; this Agreement is non-transferable and may not be re-sold or assigned. Any transfer, re-sale or assignment in violation of the foregoing shall be null and void. This Agreement includes each Exhibit referenced herein and constitutes the complete and exclusive statement of the agreement between WA and Customer, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only in a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions that may appear on any purchase order or other document furnished by Customer to WA.

Customer acknowledges that the terms and conditions of this Agreement were explained by WA and Customer understands and agrees that if this Agreement is not purchased, any services or replacement parts required after expiration of the standard warranty for devices purchased by Customer will be furnished to Customer at WA's standard pricing.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement to become effective as of \_\_\_\_\_, 201\_ (“Effective Date”).

**Welch Allyn, Inc.**

**Customer**

or: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Billing Information**

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

PO #: \_\_\_\_\_

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