



# Capital Equipment Service Agreement

This Service Agreement (the “**Agreement**”) is entered into between

**Boston Scientific Limited**  
Breakspear Park, Breakspear Way,  
Hemel Hempstead, Hertfordshire, HP2 4TZ

and

Wexham Park Hospital, Frimley Health NHS Foundation  
Trust, Wexham St, Slough SL2 4HL

Quotation Reference	14849422
Date Created	<b>17<sup>th</sup> October 2024</b>
Customer Number	<b>136870</b>
Price Effective Date	<b>17<sup>th</sup> October 2024</b>
Price Expiry Date	<b>17<sup>th</sup> October 2025</b>

The Agreement pertains to the following piece(s) of Capital Equipment:

Model	Serial Number/s
Trilogy	TBC

Coverage Period will depend on the option selected below:

UPN	UPN Description including Initial Contract Term	Quantity	Service fee per device (exclusive of VAT) £	Total Service Fee (exclusive of VAT) £
<b>SRVM006LITRITC1004</b>	Litho Trilogy TotalCare 4 YR POS	1	40,853.54	40,853.54
<b>SRVM006LITRIEC1004</b>	Litho Trilogy EssentialCare 4 YR POS	1	12,333.14	12,333.14

**The Initial Contract Term begins:**

With immediate effect upon the expiration of the Product Warranty

**Payment Options:**

Annual (default)

**In deviation from the general terms and conditions, the parties agree the following:**

The auto-renewal in accordance with Section 2 shall be excluded.

**Ordering Information:**

**Boston Scientific**  
[www.bostonscientific.com](http://www.bostonscientific.com)



- ✓ Please email a formal Purchase Order to: [CEServiceContracts@bsci.com](mailto:CEServiceContracts@bsci.com)
- ✓ Reference the Quotation number or serial number on your Purchase Order.



## Expert service supporting your commitment to patient care.

ExpertCare delivers the services you need to protect your investment and keep your department up and running. Our service team has the expertise that comes from years of collaboration with our customers to better support your goals. We offer a range of service offerings from standard to comprehensive plans designed to meet your needs and help you get the most out of your Boston Scientific capital investment.

For questions regarding your service contract, please contact [CEServiceContracts@bsci.com](mailto:CEServiceContracts@bsci.com).

For capital equipment troubleshooting and repair requests, please email the Technical Assistance Center at [CETechSupportEMEA@bsci.com](mailto:CETechSupportEMEA@bsci.com) for immediate assistance.

### Trilogy Max Service Plans – General Description and Details

Term / Coverage	Please make your selection and tick the box		
	TotalCare	EssentialCare	Coverage for Wireless Foot Pedal <sup>5)</sup>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Direct Access to Technician Service Center <sup>1)</sup>	✓	✓	✓
24/7 Phone Support During Patient Procedure	✓	✓	✓
Standard Next Business Day Shipping	✓	✓	✓
Coverage On Console, Foot Pedal and Cart. Replacement Unit Remain at Customer (SWAP)	✓	✓	
100% Coverage on Handpiece and Torque Wrench	✓		
100% Annual Coverage on Preventive Maintenance Kit Including FSE Labor And Travel Expenses <sup>2)</sup>	✓		
Safety Testing (EST/STK) <sup>2)</sup>	✓		
Two (2) Business Days Response Time <sup>3)</sup>	✓	✓	
1 Exchange of Lost/ Stolen Torque Wrench	✓		
100% Annual Coverage on Preventive Maintenance Kit Excluding Coverage on FSE Labor and Travel Expenses		✓	
25% Coverage on Handpiece and 50% on Torque Wrench		✓	
Coverage on Wireless Foot Pedal			✓



- <sup>1)</sup> Principal Coverage Period (PCP) - Monday-Friday (08:30 to 17:00). Excluding bank holidays.*
- <sup>2)</sup> Preventive maintenance will include checking for mechanical and electrical safety, functional testing and adjusting for optimum performance in accordance with the functionality specified in the Instructions for Use (IFU).*
- <sup>3)</sup> Our response time is two (2) business days from customer notification for technical issues.*
- <sup>4)</sup> Boston Scientific will provide maintenance for all software relating to the Equipment, as applicable, pursuant to this Agreement.*
- <sup>5)</sup> The coverage for the Wireless Foot Pedal is an optional coverage to be taken with TotalCare or EssentialCare only and it is not a stand alone offer.*

**Excludes:**

<b>TotalCare</b>	Consumable or accessory items, safety glasses, outer panels, fibers, fiber pole base and hand pieces. Accidental damage.
<b>EssentialCare</b>	Consumable or accessory items, safety glasses, outer panels, fibers, fiber pole base and hand pieces. Accidental damage



# Capital Equipment Service Agreement

## General Terms and Conditions

### 1. Scope

Under this Agreement, Boston Scientific will provide maintenance and repair services, if applicable including software maintenance, according to the Boston Scientific Service Plan indicated above (the “**Services**”) solely for the piece(s) of capital equipment designated above (the “**Equipment**”). Any equipment provided by a third-party and/or the Customer is not covered by this Agreement.

The Equipment shall only be eligible for coverage under this Agreement if it:

- (i) is properly installed and has only been moved in accordance with its user manual and any other written instructions for use (“**IFU**”), and
- (ii) has only been serviced by Boston Scientific authorized personnel.

### 2. Term

This Agreement shall become effective upon signature of both Parties. The initial term begins on the start date indicated above and ends after the indicated period of time unless terminated earlier in accordance with Section 8 (“**Initial Term**”).

Following the expiration of the Initial Term, this Agreement shall automatically renew for consecutive one-year terms unless terminated in accordance with Section 8 a). Each one-year renewal term shall be referred to as a “**Renewal Term**”.

### 3. Service Fee and Payment Terms

Customer agrees to pay the Service Fee as set forth above based on an invoice issued by Boston Scientific. Customer shall make the payment to Boston Scientific within 30 days from the date of invoice.

For any Renewal Term according to Section 2, Boston Scientific reserves the right to increase the Service Fee under this Agreement by up to 5%. Boston Scientific will notify the Customer in writing of such price increase no later than 3 months prior to the end of the then-current term. The Customer has a termination right in accordance with Section 8 a).

### 4. Customer’s Obligations

#### a) Location of Equipment

During the Term as defined in Section 2, the Customer shall

only move the Equipment in accordance with the applicable IFU and shall refrain from moving the Equipment to any location outside of Customer’s premises indicated above. If the Equipment is installed in a permanent way, it shall only be moved inside the Customer’s premises upon prior written consent by Boston Scientific.

#### b) Access to Equipment

Customer will grant Boston Scientific service personnel full and free access to the Equipment to perform the Services on Customer’s premises and the parties will make specific appointments for such activities. If the Equipment is not made available at the appointed time, Boston Scientific reserves the right to charge waiting time beyond a reasonable allowance at the then applicable per-call rates.

### 5. Boston Scientific’s Obligations

#### a) Service Plan

Boston Scientific’s obligations under this Agreement are defined in the Service Plan.

#### b) Replacement Parts

If included in the respective Service Plan, Boston Scientific will supply at its own expense, necessary parts, except as otherwise indicated in Section 7, provided that replacement of the parts is required because of normal wear and tear or otherwise deemed necessary by Boston Scientific. All parts will be new, standard parts, or used, reworked or refurbished parts that comply with performance and reliability specifications contained in the IFU. If the Equipment is owned by Customer, exchange parts from the Equipment shall become the property of Boston Scientific after their removal. For the avoidance of doubt, this excludes any disposables used with the Equipment which the Customer has to dispose of in compliance with Applicable Law.

#### c) Subcontractors

Boston Scientific reserves the right to conduct the Services either directly or through a subcontractor who will be bound by provisions similar to those included in this Agreement.

### 6. Provision of Loaner Equipment

- a) If any Equipment under this Agreement cannot be repaired or serviced on-site and needs to be returned to Boston Scientific’s facilities for further servicing or repair,



Boston Scientific agrees to provide the Customer with a comparable loaner device to ensure minimal disruption to the Customer's operations (the "**Loaner Equipment**"). The Loaner Equipment will be supplied at no additional cost to the Customer.

- b) The Loaner Equipment will be provided subject to availability. In the event a comparable device is not available, Boston Scientific will provide a device of similar functionality and capacity. The Customer agrees that Boston Scientific's determination of comparability for this purpose will be final and binding.
- c) The Loaner Equipment shall be dispatched to the Customer's premises within the timeframe indicated in the Service Plan.
- d) The Loaner Equipment will remain with the Customer until the original Equipment is returned to the Customer in proper working condition, at which point Customer will return the Loaner Equipment to Boston Scientific in the same condition as it was received, save for ordinary wear and tear. Any damage beyond normal wear and tear will be the responsibility of the Customer and may result in additional charges.

## **7. Causes for Exclusion/Separate Charges**

Boston Scientific's obligations under this Agreement exclude labour, parts, and expenses necessary to repair Equipment that is or has been subject to any of the following:

- (i) damaged by fire, accident, misuse, abuse, gross negligence, improper application or alteration or by a force majeure occurrence as described in Section 11 f)f), or by Customer's failure to operate the Equipment in accordance with the IFU.
- (ii) defects due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Equipment by Customer or any third party or due to the attachment and/or use of the Equipment with non-Boston Scientific supplied equipment, which is neither in line with the IFU, nor covered by Boston Scientific's prior written consent.
- (iii) Equipment fails and /or is damaged due to causes related to products that Boston Scientific did not supply.

Boston Scientific will offer separately to the Customer any maintenance or repair of Equipment covered by this Clause 7

and shall only perform such maintenance or repair after approval by the Customer on the basis of a written order from the Customer and shall thereafter invoice the Customer separately in accordance with such order.

## **8. Termination**

While neither party has a general right to terminate the Agreement without cause, the Parties shall have the following termination rights:

- a) Either Party shall have the right to terminate this Agreement by providing written notice of termination at least one month before the end of the then-current term.
- b) Either Party may terminate this Agreement upon written notice to the other party if the other party commits a material breach of any provision of this Agreement, and such breach is not cured within 30 days after receipt of written notice specifying the breach and demanding its remedy.

For the purposes of this Agreement, a material breach by the Customer shall be deemed to include, but is not limited to, the following:

- Failure to make timely payment for the services rendered under this Agreement.
- Providing false or misleading information to Boston Scientific.
- Engaging in conduct that significantly hinders Boston Scientific's ability to perform the Services.

The termination shall be effective at the end of the cure period if the breaching party fails to cure the material breach within the specified time.

- c) In the event of sale or permanent decommissioning of the Equipment, the Customer has the right to terminate the Agreement with immediate effect by providing a written notice to Boston Scientific. The termination must be accompanied by written proof of the sale or permanent decommissioning. However, this right of termination does not apply if the Equipment is lost or destroyed due to circumstances attributable to the Customer.

In the event of termination

- (i) under this clause, neither Party shall be relieved of any obligation or liability already accrued.
- (ii) in accordance with subsection b) exercised by the Customer or a termination in accordance



with subsection c), Boston Scientific will partially refund to the Customer any fees already paid in advance under this Agreement on a pro rata basis.

In addition, upon the occurrence of a material breach by Customer, Boston Scientific may immediately cease providing Services until such default is cured or corrected.

## 9. Limitation of Liability

Under this Agreement, Boston Scientific shall be liable without limitation:

- in the event of intent or gross negligence;
- within the scope of a guarantee expressly assumed by it;
- for damages resulting from injury to life, body or health;
- for the breach of an essential contractual obligation, the fulfilment of which is a prerequisite for the proper performance of this contract and on the observance of which the contractual partner regularly relies, and may rely, but limited to the damage reasonably to be expected at the time of the conclusion of the Agreement;
- in accordance with the provisions of product liability legislation.

Any further liability of Boston Scientific shall (i) not cover any lost profits, lost savings, loss of use or downtime, special, indirect, incidental damages or other consequential damages even if Boston Scientific has been advised of the possibility thereof, arising out of or in connection with this Agreement, and (ii) not exceed an amount equal to an annual Service Fee for the specific item of Equipment under this Agreement that caused the damage and is the basis for the claim made. Such Service Fee will be that in effect for the specific item of Equipment when the claim arose. The above liability rules apply accordingly to any claims against employees, legal representatives, and vicarious agents of BSC.

## 10. Confidentiality and Data Privacy

- a) For the purposes of this Agreement, "**Confidential Information**" shall mean all information, whether designated as confidential or not, disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), or learned by the Receiving Party in the course of performing the Services under this Agreement. This includes, but is not limited to, patient data, proprietary

data, technical data, trade secrets, and know-how.

- b) The Receiving Party agrees: (i) to keep confidential all Confidential Information; (ii) not to use Confidential Information for any purpose outside the scope of this Agreement; and (iii) not to disclose Confidential Information to any third party without the prior written consent of the Disclosing Party.
- c) The obligations of confidentiality under this Section shall not apply to information that: (i) is publicly known at the time of its disclosure or becomes publicly known thereafter through no fault of the Receiving Party; (ii) is received by the Receiving Party from a third party not under a duty of confidentiality; (iii) is already known by the Receiving Party prior to disclosure by the Disclosing Party as shown by the Receiving Party's written records; or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party as shown by the Receiving Party's written records.
- d) If the Receiving Party is required by law to disclose any of the Disclosing Party's Confidential Information, the Receiving Party agrees to promptly notify the Disclosing Party, to the extent legally permissible, before making any such disclosure, to allow the Disclosing Party the opportunity to contest the disclosure or take other appropriate actions to protect the Confidential Information.
- e) This Section shall survive the termination or expiration of this Agreement for a period of 3 years unless a longer period is mandated by Applicable Law.
- f) Before returning Equipment or Loaner Equipment to Boston Scientific, the Customer is obliged to delete any personal data stored on such equipment. If Boston Scientific needs to process personal data on Customer's behalf, i.e. deleting data that is stored on the Equipment or Loaner Equipment, the parties will enter into a Data Processing Agreement.

## 11. Miscellaneous

### a) Notices

All notices under this Agreement may be delivered personally, sent by registered mail, or sent by email to the addresses specified in this Agreement. Notices delivered personally or sent by registered mail shall be deemed received on the date of delivery or on the third business day after the date of mailing, whichever is earlier. Notices sent by email shall be deemed received on the date of transmission, provided no





"undeliverable" or similar automated response indicating non-receipt is received.

**b) Non-Assignment**

Neither Party may assign this Agreement or any rights and obligations hereunder to a third party without the prior written consent of the other Party, provided that Boston Scientific shall be permitted to assign this Agreement or any rights and obligations hereunder to an affiliate by written notice to Customer.

**c) Governing Law**

This Agreement shall be governed by the laws of the country in which the Customer has its registered seat ("**Applicable Law**").

**d) Severability**

If any provision of this Agreement is or becomes void, invalid, or unenforceable in whole or in part ("**Defective Provision**"), the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. In such event, the Parties undertake to agree on a provision in place of the Defective Provision that comes as close as legally possible to what they would have agreed on in accordance with the meaning and purpose of this Agreement if they had recognised the defectiveness of the provision.

**e) Waiver**

No failure or delay in exercising, on the part of any party hereto, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

**f) Force Majeure**

Neither Party will be liable to the other Party for any failure to fulfil its obligations under this Agreement due to causes beyond its reasonable control and without its fault or negligence, including, but not limited to, a change in laws and regulations, war or other violence, civil commotion, blockades, embargoes, natural hazards or disasters, explosions, accidents, pandemics, or strikes (external to the Party invoking Force Majeure). The Party invoking Force Majeure shall promptly provide written notice to the other Party, specifying the nature of the event and its anticipated impact on the performance of obligations under this Agreement.

The Party affected by a Force Majeure event shall take all reasonable steps to mitigate the impact of such event on its performance. If a Force Majeure event continues for a period

of 60 days, either Party shall have the right to terminate this Agreement upon written notice to the other Party without incurring any penalty or liability.

**g) Entire Agreement**

This Agreement, together with any schedules, exhibits, appendices, or other documents expressly incorporated by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

This Agreement may be amended or modified only in writing, and only if both Parties sign such amendment or modification.

In the event of a conflict between this Agreement and any schedule, exhibit, appendix, or other document attached hereto or referred to herein, the terms of this Agreement shall prevail.