

## AGREEMENT

This Agreement made and entered into this 3rd day of November, 2017 by and between **BREVARD COUNTY, FLORIDA** a political subdivision of the State of Florida (hereinafter referred to as the "County"), and **PHYSIO-CONTROL, INC.**, a Corporation with its principal place of business at 11811 Willows Road NE Redmond, WA 98073-9706 (hereinafter referred to as "Physio-Control").

## WITNESSETH

**WHEREAS**, the County desires to obtain the services of Physio-Control on behalf of Brevard County Fire Rescue (BCFR), with its principal place of business at 1040 S. Florida Ave., Rockledge, Florida 32955 to provide on-site Comprehensive Coverage for BCFR Lifepak 15 equipment.

**NOW THEREFORE**, in consideration and acknowledgement of the premises and the mutual promises specified hereinafter, it is mutually agreed by the parties as follows:

### SECTION 1 TERM:

The Term of this Agreement will be in force and effective October 1, 2017 and will terminate September 30, 2020.

### SECTION 2 TERMINATION:

Either party may terminate this Agreement for material breach by the other party by providing a thirty (30) days written notice to the other party, and provided such breach is not cured within the notice period. In addition, either party may terminate this Agreement at any time upon sixty (60) days prior written notice to the other party. In the event of such termination, the County shall be responsible for the portion of the designated price which corresponds to the portion of the Service Plan subscription prior to the effective date of termination and the list-price cost of any preventative maintenance, inspections, or repairs rendered after the last anniversary date of the subscription start date.

### SECTION 3 TERMS FOR ALL PRODUCTS, SERVICES AND SUBSCRIPTIONS:

**3.1** On-site Comprehensive Coverage for LIFEPAK® 15 Includes:

- Services performed at customer's location by a Physio-Control Technical Specialist.
- Parts and labor necessary to restore device to original specifications.
- Annual Preventive Maintenance and inspections including quality assurance documentation.
- Discounts on accessories, disposables, and upgrades.
- Updates to the latest software version.
- Preconfigured loaner device provided if needed.
- Battery Replacement Service.

**3.2** Physio-Control accepts the County's order expressly conditioned on the County's assent to the terms set forth in this document. The County's order and acceptance of any portion of the goods, services or subscriptions shall confirm the County's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Physio-Control of any purchase order, acknowledgment, or other document from the County specifying different and/or additional terms shall be effective unless signed by both parties.

**3.3** Physio-Control shall provide services according to the applicable Service Plan purchased by the County and described at <http://www.physio-control.com/ServicePrograms.aspx> for the length of the subscription purchased and for the devices specified in **Schedule A** as covered by the Service Plan ("Covered Equipment").

**3.4** If Covered Equipment is not made available at a scheduled service visit, the County is responsible to reschedule with the Physio-Control Service Technician, or ship-in the Equipment to a Physio-Control service depot. Physio-Control reserves the right to charge the County a surcharge for a return visit. Surcharges will be based on then-current Physio-Control list price of desired services, less 10% for labor and 15% for parts, plus applicable travel costs. The return visit surcharge will be in addition to the subscription price of the Service Plan. To avoid the surcharge, the County may ship devices to a Physio-Control service depot. The County

shall be responsible for round-trip freight for ship-in service.

- 3.5 If the County requests services to be performed on Covered Equipment which are not covered by a Service Plan, or are outside of designated Services frequency or hours, Physio-Control will charge the County for such services at 10% off Physio-Control's standard rates (including overtime, if appropriate) and applicable travel charges. Repair parts required for such repairs will be made available at 15% off the then-current list price.
- 3.6 If Covered Equipment must be removed from service to complete repairs, Physio-Control will provide the County with a loaner device, if one is available. The County assumes complete responsibility for the loaner and shall return the loaner to Physio-Control in the same condition as received, normal wear and tear exempted, upon the earlier of the return of the removed Covered Equipment or Physio-Control's request.
- 3.7 Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio-Control inability to obtain goods from its usual sources.
- 3.8 During the Service Plan subscription and for one (1) year following its expiration the County agrees to not to actively and intentionally solicit anyone who is employed by Physio-Control to provide services such as those described in the Service Plan.

#### **SECTION 4 LIMITED WARRANTY:**

- 4.1 Physio-Control warrants its products and services in accordance with the terms of the limited warranties located at <http://www.physio-control.com/Documents/>. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL**

**PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

- 4.2** All devices that are not covered under Physio-Control's Limited Warranty or a current Service Plan must be inspected and repaired (if necessary) to meet specifications at then current list prices prior to being covered under a Service Plan.

**SECTION 5 PAYMENT TERMS:**

**5.1**

| Product        | Start Date | End Date   | Qty | Term List Price | Disc % | Annual Net Price Per Unit | Term Net Price Per Unit | Extended Term Net Price |
|----------------|------------|------------|-----|-----------------|--------|---------------------------|-------------------------|-------------------------|
| LPI S-OSCOMP-3 | 10/01/2017 | 09/30/2020 | 65  | 5,184.00        | 15.00  | 1,468.80                  | 4,406.40                | 286,416.00              |
| LPISCASE       | 10/01/2017 | 09/30/2020 | 9   | 999.00          | 0.00   | 999.00                    | 999.00                  | 8,991.00                |

\* Denotes Proration

|                               |                       |
|-------------------------------|-----------------------|
| Subtotal                      | USD 295,407.00        |
| Estimated Tax                 | USD 0.00              |
| Estimated Shipping & Handling | USD 0.00              |
| <b>Grand Total</b>            | <b>USD 295,407.00</b> |

|                               |                |
|-------------------------------|----------------|
| <b>Pricing Summary Totals</b> |                |
| List Price Total              | USD 345,951.00 |
| Total Discount                | USD -50,544.00 |
| Estimated Tax + S&H           | USD 0.00       |

**Tax will be calculated at time of invoice and is based on Ship To location where product will be shipped. Service plan customers receive 15% discount on Accessories and Disposables.**

**GRAND TOTAL USD 295,407.00**

- 5.2** Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services unless Physio-Control receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or

promotions.

- 5.3** Unless otherwise specified by Physio-Control in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.
- 5.4** If the number or configuration of Covered Equipment changes during the Service Plan subscription, pricing shall be pro-rated accordingly. For Preventative Maintenance, Inspection Only, Comprehensive, and Repair & Inspect Service Plans, the County is responsible to pay for preventative maintenance and inspections that have been performed since the last anniversary of the subscription start date and such services shall not be pro-rated.

#### **SECTION 6    LIMITATION OF INTEREST:**

Through the purchase of Physio-Control products, services, or subscriptions, the County does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and the County expressly agrees not to reverse engineer or decompile such products or related software and information.

#### **SECTION 7    COMPLIANCE WITH LAWS:**

- 7.1** The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.
- 7.2** Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

## **SECTION 8 NO DEBARMENT**

Physio-Control represents and warrants that it and its directors, officers, and employees (i) are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b (f); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) are not under investigation which may result in Physio-Control being excluded from participation in such programs.

## **SECTION 9 INSURANCE:**

Physio Control, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

- a. General Liability Insurance:** General Liability insurance including but not limited to bodily injury, property damage and personal injury with limits of not less than \$1,000,000.00 combined single limit per occurrence, including products and completed operation.
- b. Workers' Compensation and Employers Liability Insurance:** Full and complete Workers' Compensation coverage, as required by the State of Florida law, and Employers Liability shall be provided.
- c. Insurance Certificates:** Physio-Control shall provide the County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability policies shall list the County as an additional insured. The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida. The insurance coverage listed above constitutes the minimum requirements and shall in no way lessen or limit the liability of Physio-Control under the terms of this Agreement.



## **SECTION 10 AUDITING, RECORDS AND INSPECTION:**

### **10.1 Regulatory Requirement for Access to Information.**

In the event 42 USC § 1395x (v) (1) (1) is applicable, Physio-Control shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Physio-Control.

### **10.2 Auditing and Inspection**

In the performance of this Agreement, Physio-Control shall keep books, records and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures by the Department of Financial Services, as set forth in Rule 69I-61.0012, Florida Administrative Code, as amended or superseded from time to time, or the Auditor General. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by Physio-Control for a period of three (3) years after termination of this Agreement for accounting related records and for other public records, five (5) years after termination of this Agreement, unless otherwise required by law to be held for a longer period of time. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119, Section 401.30, Florida Statute.

### **10.3 Public Records Request**

The County and Physio-Control agree to comply with any request for public records or documents made in accordance with Section 119.07, Florida Statutes. Upon a request for public records related to this Agreement, the County or Physio-Control, as the case may be, will inform promptly the other party of the request and, upon request of the other party, provide electronic copies of the responsive public records provided, at no additional cost to the County or Physio-Control, as the case may be.

## **SECTION 11 INDEMNIFICATION BY COUNTY:**

**11.1** Physio-Control shall indemnify the County and hold it harmless from and against all demands, claims, damages, losses, and expenses, arising out of or resulting, from any action by a third party against the County that is based on any claim that the services infringe a United States patent, copyright, or trade mark, or violate a trade secret or any other proprietary right of any person or entity. Physio-Control's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any claim; (ii) being able to, at its option, control the defense and settlement of such claim (provided that, without obtaining the prior written consent of the County, Physio-Control will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of the County in the defense of any claim.

**11.2** To the extent allowable by law the County will defend and indemnify Physio from any and all claims brought by third parties against Physio Control and will hold Physio Control harmless from all corresponding losses incurred by Physio Control arising out of or related to (i) the County's misuse of the Services and/or Software, (ii) any services provided by the County to third parties, or (iii) the County's negligence, inaction or omission in connection with the services it provides to third parties.

## **SECTION 12 JURISDICTION, VENUE AND GOVERNING LAW:**

All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the Laws of the State of Florida. Any legal action by either party against the other concerning this Agreement shall be filed in a court of competent jurisdiction in and for Brevard County, Florida, which shall be deemed the proper jurisdiction and venue for the action. Any trial shall be non-jury.

## **SECTION 13 INDEPENDENT CONTRACTOR:**

Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates; or (ii) a relationship of employer and employee between the Parties. Physio-Control is an independent contractor and not an agent of the



County.

**SECTION 14 ATTORNEY'S FEES AND COSTS:**

In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and costs.

**SECTION 15 WAIVER:**

No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Any change, amendment, or modification to this Agreement shall be authorized in writing duly approved by both parties.

**SECTION 16 SEVERABILITY:**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**SECTION 17 CONSTRUCTION OF AGREEMENT**

The parties hereby acknowledge that they fully reviewed this Agreement and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

**SECTION 18 ASSIGNMENTS:**

Physio-Control may not assign any portion of its rights, duties or responsibilities under this Agreement without written prior permission of the County.

**SECTION 19 ENTIRE AGREEMENT:**

This Agreement, including all schedules, exhibits and addenda incorporated herein by reference, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year written above.

WITNESS:

Carrie L. Cotter

Signature



CARRIE L. COTTER

MY COMMISSION # GG 001748

EXPIRES: September 19, 2020

Name & Title, Typed or Printed

Date: 11/3/2017

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By: [Signature]

Curt Smith, Chairman

Date: 11/3/17

Reviewed for legal form and content:

[Signature]  
Becky Behl-Hill, Assistant County Attorney

WITNESS:

Jennifer Stawski  
Signature

Jennifer Stawski  
Contract Coordinator  
Name & Title, Typed or Printed

Date: 10-30-17

PHYSIO CONTROL, INC.

By: [Signature]

Marcie Stetzel Service Contracts Supervisor

Date: Oct 30th, 2017

**PHYSIO-CONTROL, INC.**  
**TECHNICAL SERVICE SUPPORT AGREEMENT**  
**SCHEDULE A**

**EQUIPMENT LOCATION:**  
**BREVARD COUNTY FIRE RESCUE**  
**300 ANSIN ROAD, ROCKLEDGE, FL 32955**

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