

STATE OF TEXAS

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COUNTY OF FORT BEND

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ADDENDUM TO STRYKER SERVICE PLAN

THIS ADDENDUM (“Addendum”) is entered into by and between Fort Bend County, (“County”), a body corporate and politic under the laws of the State of Texas, and Stryker Corporation, (“Stryker”), successor in interest to Physio Control, Inc., and a company authorized to conduct business in the State of Texas.

WHEREAS, County desires that Stryker provide annual service and preventive maintenance services related to LIFEPAK AEDs (“Services”) as described in the Service Plan Quote and Terms (“Agreement”) attached hereto as Exhibit “A” and incorporated by reference); and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, Stryker represents that it is qualified and desires to perform such services.

NOW, THEREFORE, the following changes are incorporated as if a part of the Agreement:

1. **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
2. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
3. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
4. **Confidential Information.** Stryker expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV’T. CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Stryker shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
5. **Insurance.** Prior to commencement of the Services, Stryker shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on thirty (30) days’ prior written notice to County. Stryker shall provide certified copies of insurance endorsements and/or policies if requested by County. Stryker shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services.

Stryker shall obtain such insurance written on an Occurrence form from such companies having Bests' rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- a. Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- b. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- c. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- d. Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Stryker shall contain a waiver of subrogation in favor of County and members of Commissioners Court. If required coverage is written on a claims-made basis, Stryker warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the Agreement is completed.

6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Stryker for any reason are hereby deleted.
7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Stryker in any way associated with the Agreement.
8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
9. **Governing Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
10. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. By signature below, Stryker represents pursuant to Section 2252.152 of the Texas Government Code, that Stryker is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
11. **Interpretation; Captions.** For purposes of the Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to the Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Addendum; (y) to an agreement, instrument, or other document means such

agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Addendum shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Addendum to the same extent as if they were set forth verbatim herein.

12. **Entire Agreement.** This Addendum, together with all related Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of the Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event there is a conflict between this Addendum and the attached exhibit(s), this Addendum controls. The parties intend for the express terms and conditions contained in this Addendum (including any Exhibits hereto) to exclusively govern and control each of the parties' respective rights and obligations regarding the subject matter of the Agreement, and this Addendum is expressly limited to such terms and conditions. The parties have not relied on any statement, representation, warranty, or agreement of the other party or of any other person on such party's behalf, except for the representations, warranties, or agreements expressly contained in the Agreement.

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

STRYKER CORPORATION

KP George,
County Judge

Tom Tackabury

Name: Tom Tackabury
Title: Sr. Sales Manager

Date

9/16/19

Date

ATTEST:

Laura Richard,
County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 310,603.20 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A



Stryker.
11811 Willows Road NE
P.O. Box 97006
Redmond, WA 98073-9706 U.S.A
www.strykeremergencycare.com
tel (800) 442.1142
fax (800) 772.3340

Quote Number 00161620
Create Date 2/7/2019 3:57 PM
Quote Expiration Date 11/22/2019
Quote Consultant Trish Lundeen
 (425) 867-4785
 trish.lundeen@stryker.com
 WECC57

Service Plan Quote

Account: 03909801	Service Plan Detail																											
FORT BEND CTY EMS Attn: Rita Graeber, Deputy Chief-Administration 4332 HWY 36 ROSENBERG, TX 77471 (281) 633-7088 rita.graeber@fortbendcountytexas.gov	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: right;">Type</td> <td>Renewal</td> </tr> <tr> <td></td> <td style="text-align: right;">Service Plan Start Date</td> <td>10/01/2019</td> </tr> <tr> <td></td> <td style="text-align: right;">Service Plan End Date</td> <td>09/30/2023</td> </tr> <tr> <td></td> <td style="text-align: right;">Reference Plan</td> <td>DS018123</td> </tr> <tr> <td></td> <td style="text-align: right;">Billing Frequency</td> <td>Annual</td> </tr> <tr> <td></td> <td style="text-align: right;">Terms</td> <td>All quotes subject to credit approval and the following terms and conditions</td> </tr> <tr> <td></td> <td style="text-align: right;">Net Terms</td> <td>NET 30</td> </tr> <tr> <td></td> <td style="text-align: right;">Promotion</td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;">Coverage Details-Brochure</td> <td>https://www.strykeremergencycare.com/globalassets/assets/general-documents/procare_ec_lifepak_lucas_sell_sheet.pdf</td> </tr> </table>		Type	Renewal		Service Plan Start Date	10/01/2019		Service Plan End Date	09/30/2023		Reference Plan	DS018123		Billing Frequency	Annual		Terms	All quotes subject to credit approval and the following terms and conditions		Net Terms	NET 30		Promotion			Coverage Details-Brochure	https://www.strykeremergencycare.com/globalassets/assets/general-documents/procare_ec_lifepak_lucas_sell_sheet.pdf
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Notes

Service plan customers receive 15% discount on Accessories and Disposables.
 4-year renewal option.
 Please see attached device list for serial numbers.

4 LIFEPAK 1000 AED (s/n to be confirmed)
 2 LIFEPAK CR Plus AEDs (s/n to be confirmed)
 27 LIFEPAK 15s
 22 LUCAS

Product	Start Date	End Date	Qty	Term List Price	Disc %	Annual Net Price Per Unit	Term Net Price Per Unit	Extended Term Net Price
LP1000-OSPM-4	10/01/2019	09/30/2023	4	1,584.00	5.00	376.20	1,504.80	6,019.20
LPCR-OSPM-4-POS Renewal	10/01/2019	09/30/2023	2	1,488.00	15.00	316.20	1,264.80	2,529.60
LP15-PCPVOS-4	10/01/2019	09/30/2023	27	7,200.00	5.00	1,710.00	6,840.00	184,680.00
LUCAS-PCPVOS-4	10/01/2019	09/30/2023	22	5,616.00	5.00	1,333.80	5,335.20	117,374.40

* Denotes Proration
 Product Descriptions provided below signature line.

Subtotal	USD 310,603.20
Estimated Tax	USD 0.00
Estimated Shipping & Handling	USD 0.00
Grand Total	USD 310,603.20
List Price Total	USD 327,264.00
Total Discount	USD -16,660.80
Estimated Tax + S&H	USD 0.00

Tax will be calculated at time of invoice and is based on the Ship To location where product will be shipped.

GRAND TOTAL FOR THIS QUOTE
USD 310,603.20

Please provide a company issued Purchase Order that includes Billing and Shipping Address.

PO must reference payment terms of Net 30 days.

- OR -

Required information if no Purchase Order is provided

Billing Address <input type="checkbox"/> same as address on quote	Shipping Address <input type="checkbox"/> same as Billing Address
Account Name	Account Name
Address	Address
City	City
State	State
Zip Code	Zip Code
Accounts Payable Contact Information	
Accounts Payable Contact	Accounts Payable Phone Number
Accounts Payable Email	Customer is Tax Exempt? <input type="checkbox"/> Yes <input type="checkbox"/> No
Authorized Customer Signature	
Name	Signature
Title	Date

Optional information:

Special Ship to Address

Comments

For Multiple End Users, please attach a supporting document with End User name, physical location, product type and quantity

Reference Number TL/03909801/192897 /00161620

Product	Product Description
LP1000-OSPM-4	LIFEPAK1000 Service - 4 YEAR. On-site Preventive Maintenance. On-Site Preventive Maintenance Coverage for LIFEPAK 1000 Includes: -Services performed at customer's location by a Stryker Technical Specialist -Annual Preventive Maintenance and inspections including quality assurance documentation - Discounts on accessories and disposables -Updates to the latest software version -Preconfigured loaner device provided if needed -Battery Replacement Service -Replacement of adult electrodes at scheduled time of service due to expiration or failure.
LPCR-OSPM-4-POS Renewal	LIFEPAKCR+ Service - 4 YEAR. On-site Preventive Maintenance. Annual Payments. On-Site Preventive Maintenance Coverage for LIFEPAK CR Plus Includes: -Services performed at customer's location by a Stryker Technical Specialist -Annual Preventive Maintenance and inspections including quality assurance documentation -Discounts on accessories and disposables -Updates to the latest software version - Preconfigured loaner device provided if needed -Battery CHARGE-PAK and Electrode replacement at time of scheduled service
LP15-PCPVOS-4	LIFEPAK15 Service - 4 YEAR. On-site ProCare Prevent Coverage for LIFEPAK 15 Includes: -Services performed at customer's location by a Stryker 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
LUCAS-PCPVOS-4	LUCAS Service - 4 YEAR. On-site ProCare Prevent Coverage. On-site ProCare Prevent Coverage for LUCAS Includes: -Services performed at customer's location by a Stryker 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
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Service Plan Summary

List of covered equipment by location will be provided upon Customer's signature of this quote.

General Terms for all Products, Services and Subscriptions.

Physio-Control, Inc. ("Physio") accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer'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 Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. 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 receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

Payment. Payment for goods and services shall be subject to approval of credit by Physio. Unless otherwise specified by Physio 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.

Minimum Order Quantity. Physio reserves the right to charge a service fee for any order less than \$200.00.

Patent Indemnity. Physio shall indemnify Buyer 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 Buyer that is based on any claim that the services infringe a United States patent, copyright, or trademark, or violate a trade secret or any other proprietary right of any person or entity. Physio'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 Buyer, Physio will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of Buyer in the defense of any claim.

Limitation of Interest. Through the purchase of Physio products, services, or subscriptions, Buyer 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 Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

Delays. Physio 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 inability to obtain goods from its usual sources.

Limited Warranty. Physio warrants its products and services in accordance with the terms of the limited warranties located at https://www.strykeremergencycare.com/globalassets/assets/general-documents/device_warranty_statement.pdf. The remedies provided under such warranties shall be Buyer's sole and exclusive remedies. Physio 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 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. 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.

Compliance with Law. 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.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Physio 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.

No Debarment. Physio 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 being excluded from participation in such programs.

Choice of Law. The rights and obligations of Physio and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

Additional Terms for Purchase and Sale of Service Plans.

In addition to the General Terms above, the following terms apply to all Physio Service Plans.

Service Plans. Physio shall provide services according to the applicable Service Plan purchased by Buyer and described at <http://www.strykeremergencycare.com/service--support-overview/service-hospitals-ems/> for the length of the subscription purchased and for the devices specified as covered by the Service Plan ("Covered Equipment").

Pricing. 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, Buyer 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.

Device Inspection Before Acceptance. All devices that are not covered under Physio'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.

Unavailability of Covered Equipment. If Covered Equipment is not made available at a scheduled service visit, Buyer is responsible to reschedule with the Physio Service Technician, or ship-in the Equipment to a Physio service depot. Physio reserves the right to charge Buyer a surcharge for a return visit. Surcharges will be based on then-current Physio 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, Buyer may ship devices to a Physio service depot. Buyer shall be responsible for round-trip freight for ship-in service.

Unscheduled or Uncovered Services. If Buyer 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 Buyer 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.

Loaners. If Covered Equipment must be removed from service to complete repairs, Physio will provide Buyer with a loaner device, if one is available. Buyer assumes complete responsibility for the loaner and shall return the loaner to Physio in the same condition as received, normal wear and tear exempted, upon the earlier of the return of the removed Covered Equipment or Physio's request.

Cancellation. Buyer may cancel a Service Plan upon sixty (60) days' written notice to Physio. In the event of such cancellation, Buyer 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.

No Solicitation. During the Service Plan subscription and for one (1) year following its expiration Buyer agrees to not to actively and intentionally solicit anyone who is employed by Physio to provide services such as those described in the Service Plan

