

NORTH CAROLINA

GUILFORD COUNTY

THIS CONTRACT is hereby made, entered into, and effective as of this 1<sup>st</sup> day of January, 2017, by and between GUILFORD COUNTY, a body politic and corporate of the State of North Carolina, hereinafter referred to as the "COUNTY," and PHYSIO-CONTROL, INC., with a place of business in Chicago, Illinois hereinafter referred to as the "PROVIDER," and also collectively referred to as the "Parties."

W I T N E S S E T H :

WHEREAS, for the purpose and subject to the terms and conditions hereinafter set forth, the COUNTY hereby contracts for the items, goods, service or services of the PROVIDER and the PROVIDER agrees to provide the items, goods, service or services to the COUNTY in accordance with the terms of this Agreement.

WHEREAS, the COUNTY is in need of LIFEPAK Cardiac Monitor Maintenance; and,

WHEREAS, the PROVIDER has submitted a proposal to provide such goods and/or services.

NOW, THEREFORE, in consideration of promises mutually exchanged the Parties agree as follows:

- 1. Goods and/or Services.** PROVIDER will provide the goods and/or services as set forth in the **Specifications (Attachment A)** and **Proposal (Attachment B)**, attached hereto and incorporated herein by reference. All items and/or services shall be provided in a competent, workmanlike and professional manner acceptable to the COUNTY. Should there be any discrepancy between the PROVIDER'S Proposal (Attachment B) and the Specifications (Attachment A) and/or the first \_\_\_\_ pages of this Contract, the first \_\_\_\_ pages of this Contract and/or the Specifications (Attachment A) shall prevail and control.
- 2. Pricing.** As full compensation for the PROVIDER'S delivery of the goods and/or services, the COUNTY agrees to pay the amounts for the goods and/or services as set out herein and in Attachment B, which is attached hereto and incorporated herein by reference. Payment will be made by the COUNTY to PROVIDER within thirty (30) days of receipt of a correct invoice and proper documentation that the goods and/or services have been delivered or provided in accordance with this Contract.
- 3. Price Only Contract.** The COUNTY is not financially committed by this Contract to purchase any minimum amount of goods and/or services. The financial exposure to the COUNTY is not expected to exceed \$314,476.00, and in any event payment will be made only from budgeted funds in accordance with N.C.G.S. Chapter §159.
- 4. Appropriation.** This Contract is subject to annual appropriation of funds by the Guilford County Board of Commissioners or other funding source, pursuant to N.C.G.S. Chapter §153A-13.
- 5. Term.** This Contract shall be in effect for one year, beginning January 1, 2017, and ending December 31, 2017, with the option to extend for three additional one (1) year renewals at the same pricing and terms and conditions upon mutual written agreement of both Parties.
- 6. Amendment.** The terms of this Agreement may only be modified or amended with a written Contract Amendment executed by both Parties.
- 7. Termination.** Either Party may terminate this Agreement for any reason and without penalty upon thirty (30) days written notice to the other Party. All goods and/or services provided and accepted as of the date

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PHYSIO-CONTROL, INC.**

of termination will be paid for; similarly, amounts paid in advance, if any, for which goods and/or services have not been provided and accepted by the COUNTY will be promptly refunded to the COUNTY by the PROVIDER within thirty (30) days of date of termination of this Contract.

**8. Notices.** All notices pursuant to this Agreement shall be in writing and delivered personally or mailed by certified mail, registered mail, postage prepaid, with return receipt requested, at the addresses appearing below, but each Party may change such address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of three (3) days after mailing.

Bonnie Stellfox, Guilford County Purchasing Director  
GUILFORD COUNTY  
P.O. Box 3427 (zip code 27402)  
301 West Market Street  
Greensboro, NC 27401

Andy Vanderklok, Associate Pricing Manager  
Physio-Control, Inc.  
11811 Willows Road NE  
Redmond, WA 98502-2003

**9. Independent Contractor/Indemnification.** PROVIDER shall operate as an independent contractor for all purposes. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the COUNTY and either the PROVIDER or any employee or agent of PROVIDER. PROVIDER is an independent contractor and not an employee, agent, joint venture or partner of the COUNTY.

The Parties agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions to the extent allowable by law.

**10. Assumption.** If PROVIDER should undergo merger, acquisition, bankruptcy or any change in their ownership or their name for any reason, PROVIDER must immediately notify GUILFORD COUNTY in writing of these changes and provide the COUNTY with legal documentation supporting these changes, such as an Assumption Agreement, Bill of Sale, Articles of Incorporation, Articles of Amendment, sales contract, merger documents, etc. Further, PROVIDER will submit the name and address of the assuming PROVIDER'S registered agent for service of process and/or all notices required under this Contract.

**11. Severability.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

**12. Force Majeure.** Neither Party shall be liable to the other Party for any failure or delay caused by events beyond such Party's control and not due to its own negligence, provided that such Party uses commercially reasonable efforts to resume performance as soon as reasonably practicable. The non-performing Party shall notify the other Party of the force majeure event within twenty-four (24) hours of the onset thereof. In the event that a force majeure event precludes PROVIDER from performing services and/or providing goods for a period of ten (10) consecutive business days, the COUNTY shall have the right to: (a) procure replacement goods and/or services from an alternative source and/or (b) terminate the Contract or portion(s) of Contract upon written notice to PROVIDER.

**13. Headings/Titles/Wording.** Inclusion of titles of paragraphs or section headings, capitalization of certain words or phrases and/or bold face typestyle of certain words or phrases in this Contract are for convenience purposes only and shall not be used to interpret or construe the provisions of this Agreement. The terms "Contract" and "Agreement" have the same meaning and may be used interchangeably throughout this document. The terms "Attachment", "Exhibit" and "Addendum" have the same meaning and may be used interchangeably throughout this document.

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**14. Entire Agreement.** This Contract, including the Exhibits and/or Attachments, if any, sets forth the entire Agreement between the Parties. All prior conversations or writings between the Parties hereto or their representatives are merged within and extinguished. This Contract shall not be modified except by a writing subscribed to by all the Parties.

**15. Jurisdiction.** The Parties agree that this Contract is subject to the jurisdiction and laws of the State of North Carolina. The CONTRACTOR will comply with bid restrictions, if any, and applicable laws, including N.C.G.S. §143-129(j) regarding E-Verify. Any controversies arising out of this Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. An Affidavit Regarding E-Verify is attached hereto and incorporated herein by reference as **Exhibit I**.

**16. Iran Divestment Act of 2015.** Whereas, N.C.G.S. §147-86.59 requires that a State agency or political subdivision of the State must require persons attempting to contract therewith, including contract renewals or assumptions, to certify that the persons or the assignees are not identified on the list created by State Treasurer pursuant to N.C.G.S. §147-86.58. Effective as of the date of this Contract, and in accordance with N.C.G.S. Chapter 147, Article 6E entitled "Iran Divestment Act," each Party hereby certifies that it is not identified on the Final Divestment List created by the State Treasurer, which list of persons the Treasurer has determined engage in investment activities in Iran, including any subcontractors of either Party.

WITNESS the following signatures and seals all pursuant to authority duly granted, effective as of the day and year first above written.

**GUILFORD COUNTY**

ATTEST:

\_\_\_\_\_  
Marty K. Lawing, Guilford County Manager

\_\_\_\_\_  
Guilford County Clerk to Board

(COUNTY SEAL)

**PHYSIO-CONTROL, INC.**

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Corporate Secretary

Printed Name: \_\_\_\_\_

(CORPORATE SEAL)

This contract does not create an obligation to purchase and, therefore, has not been preaudited. Purchases under this contract shall only be made pursuant to purchase orders, each of which will contain a preaudit certificate.

\_\_\_\_\_  
Guilford County Finance Director

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

EXHIBIT I  
AFFIDAVIT REGARDING E-VERIFY

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf  
of \_\_\_\_\_ (the entity doing business with GUILFORD COUNTY,  
hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. Mark "Yes" or "No":
  - a. YES \_\_\_\_\_; or,
  - b. NO \_\_\_\_\_
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.  
This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_

State of North Carolina County of Guilford

Signed and sworn to (or affirmed) before me, this the  
\_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_. \_\_\_\_\_  
Notary Public

(Affix Official/Notarial Seal)