

LOS ANGELES FIRE DEPARTMENT



April 29, 2020

BOARD OF FIRE COMMISSIONERS
FILE NO. 20-043

TO: Board of Fire Commissioners

FROM: *[Signature]* Ralph M. Terrazas, Fire Chief

SUBJECT: FOURTH AMENDED AND RESTATED AGREEMENT WITH STRYKER
SALES CORPORATION (C-117907-4)

FINAL ACTION:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied	<input type="checkbox"/> Approved w/Corrections Received & Filed	<input type="checkbox"/> Withdrawn <input type="checkbox"/> Other
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SUMMARY

On September 24, 2010, the Los Angeles Fire Department (LAFD) entered into an Agreement with Scan Health, Inc., dba Sansio, to provide field data capture devices and program support services, to automate the collection of emergency medical services patient information. On January 29, 2016, the First Amendment was executed to reflect the acquisition of Sansio by Physio-Control, Inc. (Physio-Control). On April 2016, Physio-Control was acquired by Stryker Sales Corporation dba Stryker. On November 22, 2016, the Second Amendment was executed to exercise the first three-year renewal option to extend the Agreement through September 23, 2019. On October 4, 2018, the Third Amendment was executed to modify the payment terms, but not the period of performance.

This Fourth Amended and Restated Agreement exercises the second of six (6) three-year extensions to extend the term an additional 3 years to September 23, 2022, increasing the ceiling amount from \$13,726,487 to \$17,260,993 (an additional \$3,534,506 increase) and accept the said assignment of the Agreement to Stryker Sales Corporation, dba Stryker, a Michigan corporation. This extension is required in order for the Department to continue to use this software, which is vital to the performance of its EMS operations duties and the collection of EMS-related revenue, until such time that the system is replaced or this contract is extended under the terms of this agreement.

The Fourth Amendment and Restated Agreement has been reviewed and approved by the City Attorney as to legal form. Pursuant to Los Angeles City Charter Section 373, approval by the City Council is required.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute the Fourth Amended and Restated Agreement with Stryker Sales Corporation (C-117907).
2. Transmit the Fourth Amended and Restated Agreement with Stryker Sales Corporation to the Office of the Mayor for review and approval in accordance with Executive Directive No. 3.

FISCAL IMPACT

Funding for the Fourth Amended and Restated Agreement with Stryker Sales Corporation in the amount of \$1.8 million per fiscal year has been allocated in past years and is available in the FY 2019-20 Contractual Services Account 3040.

Board Report prepared by Scott Porter, Chief Information Officer, Information Technology Bureau.

Attachment

**FOURTH AMENDED AND RESTATED AGREEMENT NUMBER C-117907
BETWEEN
THE CITY OF LOS ANGELES
AND
STRYKER SALES CORPORATION
FOR FIELD DATA COLLECTION SYSTEM (FDCS)**

THIS RESTATEMENT AND FOURTH AMENDMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as the "CITY"), acting by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and Stryker Sales Corporation (hereinafter referred to as "CONTRACTOR"), with reference to the following:

WHEREAS, the City Council instructed the LAFD to prepare and release a Request For Proposals ("RFP") for emergency medical service ("EMS") billing services and technology improvements including mobile field data capture devices; and

WHEREAS, the CITY issued the RFP and found that the ScanHealth, Inc. (dba Sansio) proposal satisfied the CITY's requirements for mobile field data capture devices and the software and program support are sufficient to transmit the CITY's EMS data lawfully and efficiently to the necessary recipients; and

WHEREAS, the CITY performed its Charter Section 1022 evaluation and the Personnel Department determined that the Agreement does not require a Charter 1022 finding because the proposal is for materials proprietary to Sansio, and Sansio's staff is required to install, maintain and service its Licensed Software; and

WHEREAS, the proposed services are expert and technical in nature; and

WHEREAS, it is more economical to automate the CITY's emergency medical service field data capture function than to continue capturing the data manually, because automation facilitates more efficient transmission of Protected Health Information ("PHI"); and

WHEREAS, automating and encrypting PHI through this Agreement facilitates the CITY's compliance with the Health Insurance Portability and Accountability ("HIPAA") statutes and other privacy laws; and

WHEREAS, the CITY desires to contract with ScanHealth, Inc. (dba Sansio) to license field data capture software and lease emergency medical service mobile field data capture equipment; and

WHEREAS, on September 24, 2010, the CITY executed City Contract C-117907 with ScanHealth, Inc. (dba Sansio), a Minnesota corporation (C.F. 10-1078); and

WHEREAS, on January 31, 2014, ScanHealth, Inc. (dba Sansio) was acquired by Physio-Control, Inc. along with all its contractual obligations and became a wholly-owned subsidiary of Physio-Control, Inc. By operation of acquisition, ScanHealth, Inc. (dba Sansio) assigned this Agreement to Physio-Control, Inc and requested the CITY to accept said assignment in accordance with Section 7 Assignment of the Agreement; and

WHEREAS, on January 29, 2016, the CITY in the First Amendment to Agreement C-117907, agreed to the assignment of the Agreement to Physio-Control, Inc.; and

WHEREAS, in April, 2016, Physio-Control, Inc. was acquired by Stryker Sales Corporation (dba Stryker) along with all its contractual obligations and became a wholly-owned subsidiary of Stryker Sales Corporation (dba Stryker). By operation of acquisition, Physio-Control, Inc, assigned this Agreement to Stryker Sales Corporation (dba Stryker) and has requested the CITY to accept said assignment in accordance with Section 7 Assignment of the Agreement; and

WHEREAS, on November 22, 2016, the CITY in the Restatement and Second Amendment to Agreement C-117907, executed the first renewal option to extend the term to September 23, 2019, increase the ceiling amount from \$9,961,960 to \$14,858,844, restate the continuing terms and incorporate additional amendments; and

WHEREAS, on October 4, 2018, the CITY in the Third Amendment to Agreement C-117907, executed a revised scope of work on the terms and services to be provided, and a reduction to the maximum allowable compensation by \$1,132,357 from \$14,858,844 to \$13,726,487; and

WHEREAS, the CITY now desires in this Fourth Amended and Restated Agreement C-117907, to exercise the second of six (6) three-year extensions to extend the term to September 23, 2022, increase the ceiling amount from \$13,726,487 to \$17,260,993 and accept the said assignment of the Agreement to Stryker Sales Corporation (dba Stryker), a Michigan corporation; and

NOW THEREFORE, in consideration of the premises, representations, covenants and agreements set forth herein, the Parties represent, covenant and agree as follows:

GLOSSARY OF TERMS:

CITY Systems means the Computer Aided Dispatch ("CAD"), Electrocardiograph ("EKG"), the CITY's designated medical billing associate (Advanced Data Processing, Inc., a subsidiary of R1 RCM), the Hospital Association of Southern California and any other such computer systems that the Fire Chief requests from time to time, during the term of this Agreement.

Data Center means the CONTRACTOR's infrastructure, services and software that support the System.

Hardware means the tablets and any other equipment the CONTRACTOR provides to facilitate use of the tablets, as itemized in Exhibit C - Fee Schedule; or, any other product(s) of equal or greater value and of equal or lesser cost.

Licensed Software means the HealthEMS® field data capture software, or other software of equal or better functionality that is acceptable to the LAFD, which is licensed to the CITY for use under this Agreement.

System means the Licensed Software, Hardware, and the Data Center services.

Tablet means the data capture device, selected by LAFD, to support the Licensed Software.

1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1 Parties to the Agreement

The Parties to this Agreement are:

- a. The CITY, by and through the LAFD, having its principal office at 200 North Main Street, 18th floor, Los Angeles, California 90012.
- b. CONTRACTOR, having its principal address at 3800 E. Centre Avenue, Portage, Minnesota 49002-5826 with its Data Solutions team (performing staff) located at 11811 Willows Road NE, Redmond, Washington 98052.

1.2 Representatives of the Parties

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

- a. The CITY's representatives are, unless otherwise stated in the Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department
200 North Main St., Room 1800
Los Angeles, California 90012
(213) 978-3800
ralph.terrazas@lacity.org

Scott Porter, Chief Information Officer
Los Angeles Fire Department
200 North Main St., Room 1660
Los Angeles, California 90012
(213) 978-3921
scott.b.porter@lacity.org

- b. The CONTRACTOR's representatives are, unless otherwise stated in the Agreement:

Brian Mendonca, VP Commercial Operations
Stryker Sales Corporation
11811 Willows Road NE
Redmond, Washington 98052
(800) 442-1142
brian.mendonca@stryker.com

Greg Shelton, Division Counsel
Stryker Sales Corporation
11811 Willows Road NE
Redmond, Washington 98052
(800) 442-1142
greg.shelton@stryker.com

1.3 Notices

- a. Formal notices, demands, and communications to be given hereunder by either party must be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date received.
- b. If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice shall be given in accordance with this section, within five (5) working days of said change.
- c. Informal communications regarding daily business matters shall be made via email or telephone.

2.0 HARDWARE

The CONTRACTOR shall lease the Hardware to the LAFD in the quantities and at the rates provided in Exhibit C—Fee Schedule, as amended from time to time and included herein. CONTRACTOR shall provide all new Hardware and all necessary software, of greater or equal functionality as approved by the LAFD, at the execution of this Fourth Amended and Restated Agreement.

CONTRACTOR shall retain ownership of the Hardware and at the conclusion of this Fourth Amended and Restated Agreement. CONTRACTOR agrees to offer the Hardware identified in Exhibit C to the LAFD at no additional cost. The CITY agrees to accept all the devices “AS-IS”, with no expressed warranty considered or offered by CONTRACTOR.

In the event that the Parties determine that it would be more advantageous to procure Hardware other than that currently identified in Exhibit C; and the Parties agree that using the more advantageous Hardware will not increase the cost of this Agreement in any way or decrease the quality of the Hardware provided under this Agreement, the Parties may make the necessary changes to Exhibit C upon written approval of the Fire Chief.

CONTRACTOR shall provide the LAFD the option to acquire additional Hardware at the rates specified in Exhibit C, to accommodate increases to the LAFD fleet and operations.

3.0 TERM OF AGREEMENT

The term of this Agreement commenced on September 24, 2010 and shall end on September 23, 2022, unless terminated earlier as provided herein. The CITY, at its sole discretion, may exercise four (4) additional options to extend the term of this Agreement in three (3) year increments.

Where the LAFD requires services to continue uninterrupted to meet the demands of providing emergency medical services to the Los Angeles Community, and where these

services are consistent with the Terms and Conditions of this Agreement, those services are hereby ratified and covered.

4.0 PROCEDURES MANUAL

The Parties have developed and maintained a Procedures Manual, which may be adjusted from time to time, governing the manner in which the Parties will conduct daily business. Either Party's failure to comply with practices established in such Manual may be deemed to be a material breach of the Agreement, subject to the provisions in Section 12 Standard Provisions of this Agreement. The Parties agree to review and consider updates to the Procedures Manual on an annual basis.

5.0 SOURCE CODE ESCROW AGREEMENT

In order to provide the CITY with controlled access to the source code of CONTRACTOR's Licensed Software, CONTRACTOR has entered into a Source Code Escrow Agreement with Iron Mountain Intellectual Property Management (formerly DSI Technology), 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071. CONTRACTOR shall add the CITY as beneficiary to the Source Code Escrow Agreement, Exhibit G, prior to the date of the Project Plan meeting required under Section 6.2. Failure to do such shall constitute a material breach of this Agreement. Once enrolled as a beneficiary, the CITY shall be issued an enrollment letter and a copy of the escrow agreement from Iron Mountain. There are no fees for the CITY to be enrolled as a beneficiary of the escrow agreement.

In addition, to ensure system continuity in the event the CITY needs to access the Licensed Software without CONTRACTOR interaction, CONTRACTOR shall submit updated source code at the time this Fourth Amended Agreement is executed and thereafter from time to time, but at a minimum every six (6) months.

6.0 SERVICES TO BE PROVIDED

6.1 System Support

- a. CONTRACTOR shall provide System support for the duration of this Agreement. CONTRACTOR's Solution Center will be staffed Monday - Friday, 7AM- 6PM Pacific Time, excluding CONTRACTOR's holidays. After hours or "non-prime" hours include 6PM - 7AM Pacific Time Monday - Thursday; 5PM Pacific Time on Friday through 7AM Pacific Time the following Monday; and, CONTRACTOR's holidays. Requests for support, other than those relating to System Availability, initiated during non-prime hours shall be addressed no later than the next business day. Inquiries regarding System Availability shall be supported by technical staff during non-prime Solution Center hours.
- b. In addition to the support provided through the Solution Center, CONTRACTOR shall provide two (2) consultants on a full-time basis, dedicated solely to this Project, stationed at the CITY site designated by the LAFD, for the term of this Agreement. The consultant shall support the CITY

during regular CITY business hours for the duration of this Agreement, unless otherwise agreed by the Parties.

- c. CONTRACTOR shall respond to 95% of the LAFD's Systems related questions within five (5) minutes during Solution Center hours. System Availability issues will be resolved within twenty four (24) hours. All inquiries will be tracked with a unique "ticket" identifier in CONTRACTOR's proprietary Customer Relations Management system, available to LAFD personnel through the System, displaying response and resolution times and correspondence activity.
- d. The Parties shall determine the full extent of the need for on-site consultants as the Project proceeds. Consultants' responsibilities shall be reflected in the Procedures Manual. If additional consultants are necessary to aid in the performance of this Agreement, the parties will provide for such through amendment.

6.2 Integration

- a. CONTRACTOR shall integrate its Licensed Software with the LAFD's Computer Aided Dispatch ("CAD") system. Specific file formats to be used and timing of such file transfers shall be agreed upon by CONTRACTOR and the LAFD, and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- b. CONTRACTOR System shall be capable of receiving and transmitting the LAFD's EKG defibrillator data in near real-time. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and the LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- c. CONTRACTOR shall integrate, at its expense, CONTRACTOR's Licensed Software with the CITY's designated ambulance billing system, at the LAFD's direction for the duration of this Agreement. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and the LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- d. CONTRACTOR shall provide its emergency room module, supporting wireless transfer of pre-hospital data collected in the field to the destination facility. The emergency room module shall be provided free of charge to all ReddiNet facilities receiving patients from the LAFD. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and the LAFD and shall be reflected in the Procedures Manual.
- e. CONTRACTOR shall maintain integrations, including any updates required, to ensure compatibility with CITY Systems. The CITY will provide updates as needed to any required third-party software licenses, software development kits (SDKs), application program interface (API) fees, or access fees.

6.3 Data Center Services

- a. System Maintenance. CONTRACTOR will provide Licensed Software upgrades and enhancements at the same time as generally available to other licensees, or when required by law, whichever is earlier. CONTRACTOR is responsible for installing upgrades and enhancements for the LAFD's use at no charge to the LAFD.

- b. System Access Level. CONTRACTOR is not responsible for loss of access to the Data Center for reasons that are beyond CONTRACTOR's reasonable control. With the exception for loss of access that is beyond CONTRACTOR's reasonable control, CONTRACTOR shall maintain a level of access to the Data Center (excluding periods of emergency maintenance) of 99.8% Access Availability twenty-four (24) hours a day, seven (7) days a week, including holidays. System Access Unavailable is defined as the reported unscheduled inability of all subscribed users of LAFD to access the Data Center and verification that the problem is within the Data Center. Total System Access Unavailable minutes are calculated by adding the period of time beginning when the LAFD reports System Access Unavailable to CONTRACTOR's Solution Center and ending when CONTRACTOR's Solution Center corrects the unavailable status and closes the incident with LAFD. If the LAFD does not initiate a Solution Center call, CONTRACTOR will not be obligated to issue a Credit for the System Access Unavailability. CONTRACTOR will compute any System Access Unavailability on a quarterly average basis and apply a System Access Unavailable Credit to the next LAFD invoice in the event that the stated Access Availability commitment was not met. This occurs on a prorated basis limited to the maximum of the total invoice charges based on the total billing period. System Access Unavailable Credits will not be given for events occurring during any period in which the LAFD's account has an undisputed past due balance or the LAFD is otherwise in breach of this Agreement. The System Access Unavailable Credit will be calculated according to the following schedule:

System Access Levels			System Access Unavailable Credits
99.80%	to	100%	Covered under Agreement
99.50%	to	99.79%	1 day credit
98.50%	to	99.49%	2 days credit
97.50%	to	98.49%	1 week credit
96.50%	to	97.49%	2 weeks credit
0%	to	96.49%	1 month credit

- c. Backups. Backups of hosted applications and data are performed on a weekly (full) and nightly (incremental) basis. Backups will be scheduled at times so as to provide minimal impact to the

- d. LAFD's business activity. CONTRACTOR will maintain a copy of at least one full backup copy until after the next [daily/weekly] backup is performed. Backup will be maintained on a rolling basis and CONTRACTOR will not be

responsible for archiving more than the most recent full (daily or weekly) backup. CONTRACTOR will take commercially reasonable steps to maintain data integrity in any backup.

- e. Disaster Recovery Plan. CONTRACTOR shall have a disaster recovery and business restoration plan in place. CONTRACTOR shall test disaster recovery capabilities annually to ensure that data can be retrieved and made available to the LAFD. Disaster test reports shall be submitted to the LAFD for review. The LAFD may audit the data backed up as well as the disaster recovery and business restoration plan annually.

6.4 Training

- a. CONTRACTOR shall provide reasonably necessary training, as requested by the LAFD, regarding effective use of CONTRACTOR's System.
- b. CONTRACTOR shall notify the LAFD personnel of developments in the laws that impact the System and provide training regarding such developments, as requested by the LAFD.
- c. CONTRACTOR shall assist the LAFD in its development and maintenance of a written plan that provides for the LAFD's ongoing efforts to comply with the laws, which impact the System, as they develop during the term of this Agreement.

6.5 Security

CONTRACTOR shall use all reasonable efforts under the law to maintain the security of the Licensed Software and data, but shall not be responsible for the CITY's loss or dissemination of passwords or other breaches beyond CONTRACTOR's reasonable control.

6.6 Standards/Laws

CONTRACTOR shall conduct data collection efforts in compliance with all CITY ordinances, State, and Federal laws, and rules governing the services provided under this Agreement.

6.7 Reports

- a. CONTRACTOR shall establish a reporting system that will enable the LAFD to monitor the performance of the Services. Reports must be designed to give the LAFD the information needed to accurately measure performance.
- b. CONTRACTOR shall provide the reports specified in Exhibit B - Reports, any other reports required by Federal, State, or Local regulatory bodies, and any other reports that CONTRACTOR provides in the normal course of business.
- c. CONTRACTOR shall continue to provide data exports to support CITY and continue providing custom reports.

6.8 Access to and Maintenance of Records

- a. Access to data shall be limited to the employees, representatives and agents of CONTRACTOR and authorized personnel of CITY. All Staff shall follow the established CITY-CONTRACTOR procedures in the Procedures Manual with regard to authorization to access the Software.
- b. CONTRACTOR shall maintain records in an electronic format that meets all Federal and State requirements for maintaining patient medical information. CONTRACTOR may not destroy data without written approval of the Los Angeles City Attorney.
- c. CONTRACTOR shall maintain records, in electronic form, in accordance with requirements prescribed by the LAFD. Said records will be subject to examination and audit by authorized LAFD personnel or by the LAFD's representative at any time during the term of this Agreement. The CONTRACTOR shall provide any reports requested by the LAFD. All records must be returned to the LAFD upon expiration or termination of this Agreement, whichever occurs first.
- d. CONTRACTOR shall ensure that **all** required documentation and Agreements regarding changes to industry regulations affecting collection of pre-hospital data are filed and maintained, as a means of maintaining resources and facilitating knowledge transfer to future CONTRACTOR and CITY staff.

6.9 Licenses and Property Rights

a. License

CONTRACTOR hereby grants to the LAFD and all persons designated by the Fire Chief a non-exclusive, non-transferable (except as provided in this Agreement) license to access the Licensed Software through the Internet. CONTRACTOR shall host and deploy the System.

b. Property Rights of CONTRACTOR in the licensed Software

1. Notwithstanding any provision to the contrary herein, or in any document ancillary hereto, it is understood and agreed that the LAFD requested a Commercial Off-the-Shelf (COTS) Field Data Capture System and that CONTRACTOR is granting a non-exclusive, non-transferable (except as provided in this Agreement) license to access the System and related documentation. The LAFD acknowledges that the System and other proprietary materials supplied by CONTRACTOR to the LAFD are and shall remain the property of CONTRACTOR and nothing in this Agreement shall be construed as transferring any aspect of such rights to the LAFD or any third party. For the term of this Agreement, the LAFD shall use and access the System as defined herein. Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided under this Agreement shall remain the proprietary property of CONTRACTOR.

2. **Unauthorized Acts.** The LAFD agrees to notify CONTRACTOR, as soon as practical, of the unauthorized possession, use, or knowledge of any item supplied under this license and of other information made available to the LAFD under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. The LAFD will promptly furnish full details of such possession, use or knowledge to CONTRACTOR, will assist in preventing the continuation or recurrence of such possession, use or knowledge, and will cooperate with CONTRACTOR in any litigation against third parties deemed necessary by CONTRACTOR to protect its proprietary rights. The LAFD's compliance with this subparagraph shall not be construed in any way as a waiver of CONTRACTOR's right, if any, to recover damages or obtain other relief against the LAFD for its negligent or intentional harm to CONTRACTOR's proprietary rights, or for breach of contractual rights.
3. **Remedies.** If the LAFD attempts to use, copy, license, sub-license or otherwise transfer the Licensed Software or access to the System supplied by CONTRACTOR under this Agreement, in a manner contrary to the terms of this Agreement, whether these rights are explicitly stated, determined by law, or otherwise, CONTRACTOR shall have the right to injunctive relief enjoining such action, in addition to any other remedies available. The LAFD acknowledges that remedies at law may be inadequate.

6.10 Warranty

a. Software

For duration of this Agreement (the "Warranty Period"), CONTRACTOR will checkout, document and deliver any amendments or alterations to the Licensed Software that may be required to correct errors which significantly affect performance. This warranty is contingent upon the LAFD advising CONTRACTOR in writing of such errors. CONTRACTOR shall not be responsible for maintaining the LAFD-modified portions of the Licensed Software. Corrections for difficulties or defects traceable to LAFD errors or System changes will be billed at CONTRACTOR's standard time and materials rates.

b. Hardware

CONTRACTOR has included in the cost of this Agreement an extended manufacturer's warranty, as provided in Exhibit C. The cost of the manufacturer's warranty for the Hardware replaced at the execution of this Fourth Amended and Restated Agreement is also included in Exhibit C of this Amendment. CONTRACTOR undertakes no other obligation with regard to lost or damaged Hardware.

c. Warranty

The warranty set forth in this Agreement is the only warranty made by CONTRACTOR. CONTRACTOR expressly disclaims, and the LAFD hereby

expressly waives, all other warranties express, implied or statutory, including warranties of merchantability and fitness for a particular purpose. CONTRACTOR does not warrant that the Licensed Software will meet the LAFD's requirements, except as expressly set forth in this Agreement, or that the operation of the Licensed Software will be uninterrupted or error-free, or that except as required herein to address errors that significantly affect performance, errors in the Licensed Software will be corrected. CONTRACTOR's limited warranty is in lieu of all liabilities or obligations of CONTRACTOR for the damages arising out of or in connection with the installation, use or performance of the System.

d. Limitation of Liability

With regard to claims by CITY against CONTRACTOR relating to CONTRACTOR's performance of the Contract, including without limitation claims for breach of warranty and claims of professional negligence, it is agreed that CONTRACTOR's liability will not exceed \$2,000,000 for any occurrence and in any year of the Contract's term, provided that in no event shall such liability exceed \$10,000,000 for the entire time the Agreement remains in full force and effect. In no event will either party be liable to the other for any special or consequential damages. Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement to the contrary, no limitation of liability or limitation of warranty or disclaimer shall be applicable to CONTRACTOR's breach of its obligations under Exhibit A - Standard Provisions for City Contracts, PSC-18 Indemnification, or to a party's breach of its obligations under Section 10 and/or Exhibit D - Business Associate Agreement, it being the intent of the respective parties that the breaching party remain fully liable therefore.

7.0 ASSIGNMENT

This Agreement is not assignable by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. After and upon approved assignment, this Agreement shall bind and inure to the benefit of the Parties and their respective successors, assignees, transferees, and legal representatives.

8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 Compensation

For satisfactory services rendered under this Agreement, the CITY shall pay the CONTRACTOR in accordance with Exhibit C, only for items received and services requested by the LAFD. Payment for optional items will only occur where the Fire Chief has authorized in writing to CONTRACTOR that the LAFD desires to additional services, activate additional software elements, or provide additional accessories for the leased devices. The CITY shall issue a check for the amount invoiced, less any disputed amounts, within thirty (30) days of approval of a complete invoice. CONTRACTOR shall resolve any disputed amounts within sixty (60) days from the date the CITY gives notification of a dispute.

8.2 Taxes

Through prior arrangement with CONTRACTOR, CITY agrees to remit sales tax directly to the State of California Board of Equalization.

8.3 Method of Payment

- a. The CONTRACTOR must include the following information, and any other documentation requested by the LAFD, in each invoice:
 1. Date of invoice
 2. Invoice number
 3. Agreement number
 4. Description of services
 5. Amount of Invoice and the supporting documentation.
- b. Except as otherwise expressly provided for in this Agreement, all other costs incurred by CONTRACTOR in the performance of the CONTRACTOR Services (including, but not limited to postage, materials, communications and phone costs and other operating costs) shall be CONTRACTOR's sole responsibility.
- c. Interests and Costs. Undisputed amounts not paid when due will bear interest at the rate of 1.5% per annum on the unpaid balance each month, or such lesser rate of interest as shall be the maximum amount chargeable with respect to this account under the law in effect in the State of California.
- d. Taxes: CONTRACTOR is required to collect sales tax on products and services provided to customers under the laws and tax code governing the State of California and any local tax authorities. The Hardware described in Exhibit C is subject to sales tax. The Licensed Software and consulting labor will not be taxed unless required by law at some time in the future.

9.0 KEY PERSONNEL

9.1 LAFD Key Personnel

- a. Project Manager as designated by the Fire Chief.
- b. System Administrator.
The System Administrator shall be designated by the LAFD Information Systems Manager (ISM) the Policy Manual referenced in Section 4.0 of this Agreement.
- c. Authorized Users.

The LAFD shall, through its Management Information Systems Section, maintain a list of authorized users to the CONTRACTOR's System, which will be reviewed and updated as changes occur.

9.2 CONTRACTOR Key Personnel

- a. Exhibit F - Staff Assignment Table, provided by CONTRACTOR, lists the Project Manager, all Key Personnel and their assignments during the project,

including any Subcontractor personnel. The table contains all key assigned personnel who have been approved for work on this project, including replacement personnel who may be substituted for an assigned staff member should they be ultimately be unavailable. Payment requirements for Exhibit F services are included in Exhibit C – Fee Schedule.

- b. The LAFD reserves the right to approve or disapprove key personnel. The LAFD will allow a CONTRACTOR or Subcontractor to substitute out key personnel upon LAFD written approval. Replacement of reassigned personnel, if approved, shall be with personnel with equal or greater ability and qualifications, and provided at no charge for their first ten (10) business days following their start date to bring the replacement up to speed. In addition, the LAFD reserves the right to require a replacement of employees whom the LAFD judges to be unsuitable, or whose continued use is deemed to be contrary to the best interest of the LAFD.

10.0 CONFIDENTIALITY

10.1 Confidentiality.

- a. Confidential Information. The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence, subject to applicable statutory requirements regarding public records. Each party agrees to protect the Confidential Information of the other party in a manner consistent with the protections used to protect its own Confidential Information, including, without limitation, informing its employees of its obligations under this Agreement and taking such steps as are reasonable in the circumstances, or as reasonably requested by the other party, to prevent any unauthorized disclosure, copying or use of Confidential Information. Confidential Information means any proprietary or other information that is required or allowed to be maintained in confidence under the laws governing a municipal corporation. Confidential Information shall also include Protected Health Information as defined in Exhibit D - Business Associate Agreement. The LAFD recognizes that the CONTRACTOR may desire to protect information relating to its business from disclosure under the California Public Records Act under circumstances when the CITY determines that disclosure is otherwise appropriate. Therefore, the LAFD shall notify the CONTRACTOR of every California Public Records request, immediately upon receipt.
- b. The CONTRACTOR must ensure that each individual sent on an assignment under this Agreement shall have executed a Confidentiality Agreement prior to commencing any assignment. CONTRACTOR agrees to provide the signed Confidentiality Agreement to the LAFD prior to commencing any assignment. The Confidentiality Agreement to be used is attached hereto as Exhibit E. The CONTRACTOR is responsible for ensuring compliance with the Confidentiality Agreements.
- c. CONTRACTOR shall protect the confidentiality of all patient records as set forth in State and/or Federal laws on confidentiality of medical records.

- d. Unauthorized Disclosure. The recipient of any Confidential Information shall, upon discovery of any unauthorized use or disclosure of such Confidential Information by recipient, or any other breach of these confidentiality obligations by the recipient, fully cooperate with the disclosing party to assist the disclosing party regain possession of the Confidential Information and prevent the further unauthorized use or disclosure of the Confidential Information.
- e. Remedies. The Parties acknowledge and agree that in the event of a breach of Confidentiality, the non-breaching party may suffer irreparable injuries not compensable by money damages alone; and therefore, the non-breaching party will not have an adequate remedy at law. The non-breaching party shall be entitled to injunctive relief without the necessity of posting any bond or undertaking to prevent any further breach. Such remedy shall be in addition to any other remedy the non-breaching party may have.

10.2 CONTRACTOR's Interaction with the Media

CONTRACTOR shall refer all inquiries from the media to the LAFD, shall, as soon as practical, contact the LAFD to inform the LAFD of the inquiry, and shall comply with the procedures of the LAFD's public affairs staff regarding statements to the media relating to this Agreement or CONTRACTOR's services hereunder.

10.3 Requirements Apply to All Subcontractors

The CONTRACTOR shall ensure that these requirements are provided to and apply to all Subcontractors of this Agreement.

10.4 Continued Requirements

The requirements of this Section survive termination of this Agreement.

11.0 INSURANCE

11.1 CONTRACTOR shall procure and maintain for the duration of this Agreement, the following insurance coverage:

- a. Workers' Compensation insurance in compliance with the applicable State and Federal laws, and not less than \$1,000,000;
- b. General Liability insurance in an amount no less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
- c. General Liability insurance in an amount no less than Coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$1,000,000 aggregate;
- d. Storage of Licensed Software code and data in a secure escrow account such that the LAFD would have access to it in the event that the

CONTRACTOR ceases as a business entity and is unable to provide the services outlined in this Agreement. In that circumstance, the LAFD would have access to run the Licensed Software for a period of time not to exceed twelve (12) months while a new provider is contracted for field data collection system services;

- e. Liability coverage for all vehicles whether owned, hired or used in the amount of \$1,000,000;
- f. Professional Liability insurance for cyber security and data breach including technology errors and omissions in the amount of \$5,000,000;

11.2 The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage

- 1. The LAFD, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR, including the insured general supervision of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protections afforded to the LAFD, its officers, officials, employees or volunteers.
- 2. CONTRACTOR's insurance coverage shall be primary insurance as respects the LAFD, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the LAFD, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. CONTRACTOR hereby waives subrogation rights for loss or damage against the LAFD.
- 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the LAFD, its officers, officials, employees or volunteers.
- 4. CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5. Companies issuing the insurance policy, or policies, shall have no recourse against the LAFD for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of CONTRACTOR.

b. All Coverage

- 1. Each insurance policy required by this Section shall be endorsed to State that coverage shall not be suspended, voided, canceled, or reduced in

coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the LAFD.

2. CONTRACTOR shall furnish the LAFD with certificates of insurance and with original endorsements effecting coverage required by this Section if requested. The certificates and endorsements for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the LAFD before work commences. The LAFD reserves the right to require complete, certified copies of all required insurance policies at any time.
3. Payment Withholding: Should any of CONTRACTOR or Subcontractor's required insurance lapse during the term of the Agreement, the CITY shall not process any requests for payments originating after such lapse until the CITY receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

12.0 STANDARD PROVISIONS

The CONTRACTOR must comply with the applicable requirements of the Standard Provisions for City Contracts (Rev. 10/17)[v/3], except as noted in this Agreement, attached hereto as Exhibit A, and incorporated herein by reference. Should there be any discrepancy between provisions in this Agreement and the Standard Provisions, those in this Agreement shall take precedence.

13.0 DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE

CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The CITY may terminate this Contract at any time if the CITY determines that CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

14.0 ORIGINAL AGREEMENT

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

15.0 TABLE OF EXHIBITS

The Exhibits listed below are incorporated into this Agreement by this reference.

Exhibit A - Standard Provisions for City Contracts (Rev 10/17)[v.3]

Exhibit B - Reports (as executed on 9/24/2010)
Exhibit C - Fee Schedule 2019 - 2022 (revised 5/21/2020 \$3,534,505.55)
Exhibit D - Business Associate Agreement
Exhibit E - Confidentiality Agreement
Exhibit F - Staff Assignment Table
Exhibit G - Source Code Escrow Agreement (as executed on 9/24/2010)

[Signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this Restatement and Fourth (4th) Amendment to Agreement C-117907 to be executed by their duly authorized representatives:

THE CITY OF LOS ANGELES

By _____
RALPH M. TERRAZAS
Fire Chief

Date _____

STRYKER SALES CORPORATION
(formerly known as PHYSIO-CONTROL, INC.,)

By _____
BRIAN MENDONCA
Vice President, Commercial Operations

Date _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

ATTEST:

HOLLY L. WOLCOTT

By _____
SAMUEL PETTY
Deputy City Attorney II

By _____
Deputy City Clerk

Date _____

Date _____

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC-1 Construction of Provisions and Titles Herein 1

PSC-2 Applicable Law, Interpretation and Enforcement..... 1

PSC-3 Time of Effectiveness..... 1

PSC-4 Integrated Contract 2

PSC-5 Amendment..... 2

PSC-6 Excusable Delays..... 2

PSC-7 Waiver..... 2

PSC-8 Suspension 3

PSC-9 Termination 3

PSC-10 Independent Contractor 5

PSC-11 Contractor’s Personnel..... 5

PSC-12 Assignment and Delegation 6

PSC-13 Permits..... 6

PSC-14 Claims for Labor and Materials 6

PSC-15 Current Los Angeles City Business Tax Registration Certificate Required 6

PSC-16 Retention of Records, Audit and Reports..... 6

PSC-17 Bonds..... 7

PSC-18 Indemnification 7

PSC-19 Intellectual Property Indemnification 7

PSC-20 Intellectual Property Warranty..... 8

PSC-21 Ownership and License..... 8

PSC-22 Data Protection 9

TABLE OF CONTENTS (Continued)

PSC-23 Insurance 9

PSC-24 Best Terms..... 9

PSC-25 Warranty and Responsibility of Contractor..... 10

PSC-26 Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

PSC-27 Child Support Assignment Orders..... 10

PSC-28 Living Wage Ordinance 11

PSC-29 Service Contractor Worker Retention Ordinance 11

PSC-30 Access and Accommodations 11

PSC-31 Contractor Responsibility Ordinance..... 12

PSC-32 Business Inclusion Program..... 12

PSC-33 Slavery Disclosure Ordinance 12

PSC-34 First Source Hiring Ordinance..... 12

PSC-35 Local Business Preference Ordinance 12

PSC-36 Iran Contracting Act 12

PSC-37 Restrictions on Campaign Contributions in City Elections..... 12

PSC-38 Contractors’ Use of Criminal History for Consideration of Employment Applications 13

PSC-39 Limitation of City’s Obligation to Make Payment to Contractor 13

PSC-40 Compliance with Identity Theft Laws and Payment Card Data Security Standards 14

PSC-41 Compliance with California Public Resources Code Section 5164..... 14

PSC-42 Possessory Interests Tax..... 14

PSC-43 Confidentiality..... 15

Exhibit 1 Insurance Contractual Requirements..... 16

STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: Los Angeles Fire Department

Date: 09/19/2019

Agreement/Reference: Stryker - Field Data Collection System

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)

WC Statutory

EL \$1,000,000

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

General Liability \$1,000,000 per occurrence, \$2,000,000 aggregate

\$1,000,000

Products/Completed Operations

Sexual Misconduct ³⁾ Coverage to include Fiducian

Fire Legal Liability _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

\$1,000,000

Professional Liability (Errors and Omissions)

\$5,000,000

Discovery Period See Note #3

Property Insurance (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

Fine Arts - Cover value of exhibit _____

Pollution Liability

Surety Bonds - Performance and Payment (Labor and Materials) Bonds

100% of the contract price

Crime Insurance

Other:

1) If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request For Waiver of Workers' Compensation Insurance Requirement" located at: <http://cao.lacity.org/risk/InsuranceForms.htm>

2) In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

3) Coverage to include Fiduciary Liability (if applicable), Errors & Omissions, Cyber Liability and Data Breach

Exhibit B – LAFD Report Requirements

The FDCS shall include the following printable reports, ready to use as part of the system rollout:

1. Incident Reports (30 days and 90 days)

Report displaying the following information:

- a) The EMS incidents by count, which could be reported by Division, by Battalion, by Fire Station, by Unit, by individual employee for a specific time period
 - b) For each dispatch code, both transport and non transport:
 - Number of Basic Life Support (BLS) procedures
 - Number of Advanced Life Support (ALS) procedures
 - Number of no treatment
 - Number of refused treatment
 - Number of transports
 - c) Patient volume by time of day, day of week, and other time segments defined by user
 - d) Patient disposition by primary/secondary impression
 - e) Dispatch/transport codes by primary/secondary impression
 - f) Patient dispositions: system-wide, by unit, and by personnel
2. Dispatched EMS Incidents Summary Report
3. EMS Dispatch Categories Summary Report
4. Transport Reports (30 days and 90 days).

Report displaying the following info for the total number of transports:

- a) Number and percentage of "Code 3" type of incident
 - b) Number of "Diverted From" incident (for each facility)
 - c) Level of Severity
 - Number and percentage of "NONE"
 - Number and percentage of "MILD"
 - Number and percentage of "MODERATE"
 - Number and percentage of "SEVERE"
5. EMS Transport Summary Report
6. Hospital Transports Summary Report
7. Count of EMS Incidents by Response Time of ALS Unit Summary Report

Report shall display: a count of number of incidents grouped by the respond time (ranging from 2 – 15 minutes), and comparison to previous quarter.

8. Number of Dead on Arrival (DOA) Report (30 days and 90 days)

9. Number of Pronounced By Base Report (30 days and 90 days)
10. Number of Automatic External Defibrillator (AED) Report (30 days and 90 days)
11. Number of Public Access Defibrillator Used (30 days and 90 days)
12. General System Report

Report displaying the following info:

- a) Call volume by chief complaint
- b) Call volume by gender
- c) Call volume by age
- d) Call volume by dispatch code

13. Supply and Drug Usage Report

Report displaying the monthly supply and drug usage used by:

- a) Unit
 - b) Fire Station
 - c) Battalion
 - d) Division
14. Audit Trail Report
 15. Non-Transport Report

Exhibit C

Sansio
LAFD Hardware Pricing

Hardware Description	Part #	Unit Cost	Quantity	Extended Unit Cost Amount
GETAC : R Series, Core M-5Y71, Webcam, Win10x64+8GB, 128GB SSD, SR (LCD+Touch), US Power Cord, 8M Rear Camera, Wifi+BT+GPS+Gobi+Passthrough, High Capacity Battery+Smart Card Exp., Barcode Reader	Gen1 product	\$2,855.73	30	\$79,672
GETAC year 1-3 B2B, priority care, screen protector and pool warranty coverage		\$311.80	30	\$9,354
Getac High Capacity Main Battery (Rx10)	GBM8X1	\$166.95	200	\$33,390
GETAC RX10 brackets with rotating handstrap		\$98.72	120	\$11,846
11-16VIN for GETAC F110, 8300 T800 W/96" output	GE-LIND-LAFD	\$64.44	36	\$2,320
Sub-Total Device Cost		\$3,134.48		\$136,582
Hardware Description	Part #	Unit Cost	Quantity	Extended Unit Cost Amount
GETAC year 5-6 B2B, priority care, screen protector and pool warranty coverage		\$1,330.07	536	\$712,918
Sub-Total Device Cost		\$1,330.07		\$712,918
Device Remote Management Software		Monthly	Quantity	Yearly Cost
Fortres Grand Clean Slate Cloud subscription @ \$26,160 annually		\$2,180.00	12	\$26,160
TeamViewer subscription @ \$2200 annually		\$183.33	12	\$2,200
Annual Sub-Total Costs		\$2,363.33		\$28,360
Offsite Device Maintenance & IT Support				Extended Unit Cost
Master Image Creation (Getac RX10 v09.00)				\$15,000.00
Total Costs				\$15,000
Optional accessory items (not in fee schedule):				
Shoulder strap	GMS2X2	\$41.99		
Kick stand	GOKSZX1	\$73.49		
Detachable keyboard	GDKBU3	\$398.99		
RX10 Capacitive stylus & tether	GMPSXC	\$31.49		
11-16VIN for GETAC F110, 8300 T800 W/96" output	GE-LIND-LAFD	\$64.44		
Getac Main Battery RX10 4-Cell 4200mAh 14.4V	GBM4X1	\$135.45		
Getac High Capacity Main Battery (Rx10)	GBM8X1	\$166.95		
Gamber Johnson Vehicle Mount	GDVMGC	\$313.95		
Spare AC adapter & power cord	FAA6UI	\$83.99		
Multi-bay Battery Charger - Eight Bays	GCECU8	\$1,363.95		
External Dual Bay Main Battery Charger	GCMCUG	\$419.99		
Office Dock with US AC Adapter	GDOFUC	\$419.99		
GETAC RX10 brackets with rotating handstrap		\$98.72		
GETAC 24 month extended B2B, priority care, screen protector and pool warranty coverage		\$1,330.07		
Sub-Total Accessory Items				

**BUSINESS ASSOCIATE AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
STRYKER SALES CORPORATION
[FORMERLY KNOWN AS PHYSIO-CONTROL, INC.]**

**TO COMPLY WITH THE PRIVACY AND SECURITY RULES REQUIRED UNDER THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996**

This **Business Associate Agreement** (the “Agreement”), is made as of the ____ day of _____, 2019, (the “Effective Date”), by and between the City of Los Angeles, (a designated “Hybrid Entity” by and through its Fire Department (“LAFD,” a designated “Health Care Component” of “Hybrid Entity” City of Los Angeles) (jointly “Covered Entity”) and Stryker Sales Corporation [formerly known as Physio-Control, Inc.] (the “Business Associate”) (collectively the “Parties”) to comply with the privacy and security standards required under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), adopted by the U.S. Department of Health and Human Services and as amended January 25, 2013, [45 C.F.R. Parts 160, 162 and 164; Volume 78 Fed. Reg. No. 17, Pages 5566 through 5702, January 23, 2013] and, in order to satisfy the electronic storage requirements of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as “HITECH”), and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate (“BA”) will provide emergency medical field data capture functions and software licenses to or on behalf of the Covered Entity (“CE”);

WHEREAS, the CE and BA have entered into the Contract under which the CE will need to disclose to BA certain “Protected Health Information” (“PHI”) that is subject to protection under HIPAA and HITECH;

WHEREAS, HIPAA requires that CE receive adequate assurances that BA will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of CE;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. DEFINITIONS

Terms used in this Agreement, but not otherwise defined, shall have the meaning ascribed by the HIPAA Final Regulations and the HITECH Act, as amended as of January 23, 2013.

1. **Breach** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of 45 C.F.R. Part 164.
2. **Business Associate** (“BA”) shall have the meaning ascribed in 45 C.F.R. § 160.103 and refers to Stryker Sales Corporation [formerly known as Physio-Control, Inc.] for purposes of this Agreement.
3. **Contract** means Los Angeles City Contract Number C-117907 and all amendments by and between the City of Los Angeles (“City”) and Stryker Sales Corporation [formerly known as Physio-Control, Inc.] which includes providing emergency medical field data capture functions and software licenses to or on behalf of the Covered Entity.
4. **Covered Entity** (“CE”) means the City of Los Angeles, (a designated “Hybrid Covered Entity” by and through its Fire Department, a designated “Health Care Component” of “Hybrid Entity” City of Los Angeles).
5. **Designated Record Set** means a group of records maintained by or for a Covered Entity that are: (i) medical records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record system maintained by or for a health plan; and/or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Covered Entity.
6. **Health Care Component** (“HCC”) means those portions of the Hybrid Entity that perform HIPAA-related activities. The Los Angeles Fire Department (LAFD) became a HCC by the Los Angeles City Council action which adopted the recommendation of the Personnel Committee meeting on July 30, 2010 [Council File No. 10-1181] or as modified [Council File No. R3-0240; August 16, 2013].
7. **HITECH Act** (“HITECH”) means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.
8. **HIPAA Final Regulations** means 45 C.F.R. Parts 160, 162 and 164 as amended on January 23, 2013 and effective on March 23, 2013 but only to the extent it applies to a Covered Entity, Hybrid Entity and/or Business Associate.

9. **Hybrid Entity** (“HE”) means, for purposes of this Agreement, the City of Los Angeles, a single legal municipal entity that is (i) a Covered Entity; (ii) whose business activities include both covered and non-covered HIPAA functions; and (iii) that has designated its LAFD, along with other portions of the City of Los Angeles, as a HHCs pursuant to 45 C.F.R. § 160.103.
10. **Individual** means the person who is the subject of the Protected Health Information as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 502(g).
11. **Protected Health Information** (“PHI”) means the Individually Identifiable Health Information (“IIHI”) described in 45 C.F.R. § 160.103 that is transmitted electronically, maintained electronically, or transmitted or maintained in any other form or medium.
12. **Required by Law** means mandate contained in law that compels a use or disclosure of PHI under 45 C.F.R. § 164.512(a) (1) and (2).
13. **Secretary** means the Secretary of the Department of Health and Human Services or their designee under 45 C.F.R. § 160.103.
14. **Security Incident** any use or disclosure of information not provided for by this “Agreement” of which the BA becomes aware, including breaches of unsecured protected health information as defined by 45 C.F.R. § 164.402.
15. **Subcontractor** means a person or entity that, creates, receives, maintains or transmits protected health information on behalf of the business associate. (45 C.F.R. 160.103(3)(iii))

B. DISCLOSURE OF PHI TO BUSINESS ASSOCIATE

In connection with the services provided by BA to or on behalf of CE, described in this Agreement, CE may disclose PHI to BA for the purpose of all described activities related to emergency medical field data capture functions and software license services provided to CE. At no time shall BA use or disclose PHI or other related documents to any 3rd party.

BA shall comply with its obligations under this Agreement and with all obligations of a BA under HIPAA, HITECH, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. Specifically, the BA will comply with all the obligations and assume the liability for failure to do so as provided for in the Final Rules reflected in the Federal Register, Vol. 78, No. 17, commencing at Page 5677,

dated, January 25, 2013 which implements among other things Section 13401 of HITECH.

C. OBLIGATIONS OF COVERED ENTITY

1. CE shall notify BA of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CRF §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.
2. CE shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI.
3. CE shall notify BA of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect BA's use or disclosure of PHI.
4. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by CE. [45 C.F.R. § 164.504(e)(2)(i)]
5. CE will make a determination as to whether a use or disclosure of PHI by BA is a Breach within the meaning of 45 C.F.R. 164.402 necessitating notification under 45 C.F.R. 164.404, 164.406 and 164.408.

D. OBLIGATIONS OF BUSINESS ASSOCIATE

BA agrees to comply with applicable federal and state privacy and security laws, specifically the provisions of the HIPAA Administrative Simplification to the extent applicable to business associates.

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, BA shall not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law, except as necessary to provide emergency medical field data capture functions and software licenses as described in this Agreement and the Contract to or on behalf of the CE. These activities include a review of selected records and may include the transmitting or receiving of PHI, as may be required from time to time, to other business associates or covered entities on behalf of CE. BA shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by CE. Provided, however, BA may use and disclose PHI as necessary for the proper management and administration of BA, or to carry out its legal responsibilities. BA shall in such cases:
 - (a) Provide information to members of its workforce using or

disclosing PHI regarding the confidentiality requirements of the HIPAA Final Rules and this Agreement;

(b) Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify BA of any instances of which it is aware in which confidentiality of the PHI has been breached;

(c) Notification to Covered Entity. Agree to notify the designated Privacy Officer of CE of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules within 72 hours of discovery of the improper use or disclosure. The determination as to whether a use or disclosure for a purpose not provided for by this Agreement is a Breach within the meaning of 45 C.F.R. 164.402 shall be determined by the CE using the criteria determined in 45 C.F.R. 164.402 (2)(i)-(iv) after BA notifies CE of the use or disclosure of the PHI;

(d) Breach Notification. BA agrees to follow 45 C.F.R.164.410 after first notifying CE of the use or disclosure not provided by this Agreement and CE makes a determination that a breach has occurred pursuant to paragraph C(5) of this Agreement; and

(e) For purposes of the Breach Notification provision in 45 C.F.R. 164.410, BA in this Agreement is **not** the agent of CE.

2. Data Aggregation. In the event that BA works for more than one covered entity, BA is not permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Administrative Simplification.
3. De-identified Information. BA may use and disclose de-identified health information if (i) the use is disclosed to CE in writing and permitted in writing by CE in its sole discretion and (ii) the de-identification is in compliance with 45 CFR §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b).
4. Safeguards. BA shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. BA shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality,

BUSINESS ASSOCIATE AGREEMENT

Page 6 of 13

integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of CE.

5. Minimum Necessary. BA shall attempt to ensure that all uses and disclosures of PHI which pertain to the billing or operations of the CE are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.
6. Disclosure to Agents and Subcontractors. If BA discloses PHI received from CE, to agents, including a subcontractor, BA shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to BA under this Agreement. BA shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the CE. BA shall be liable to CE for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were BA’s own acts, failures or omissions, to the extent permitted by law. BA further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. Individual Rights Regarding Designated Record Sets. If BA maintains a Designated Record Set on behalf of CE, BA agrees as follows:
 - (a) Individual Right to Copy or Inspection. BA agrees that if it maintains a Designated Record Set for CE that is not maintained by CE, it will, in the event any Individual delivers directly to BA a request for access to PHI, in order for CE to respond to such Individual, forward such request to CE in order to meet the requirements of 45 CFR §164.524(a)(1). Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. [45 C.F.R. § 164.524(b)(2).] BA agrees to make reasonable efforts to assist CE in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If CE maintains the requested records, CE, rather than BA shall permit access according to its policies and procedures implementing the HIPAA Administrative Simplification.
 - (b) Individual Right to Amendment. BA agrees, if it maintains PHI in a Designated Record Set, to make the Designated Record Set available to CE for amendments to PHI pursuant to 45 CRF §164.526.

- (c) Accounting of Disclosures. BA agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 CFR §164.528, and to make this information available to CE upon CE's request, in order to allow CE to respond to an Individual's request for accounting of disclosures. Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. BA agrees to use its best efforts to assist CE in meeting this deadline. Such accounting must be provided without cost to the individual or CE if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if BA informs the CE in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the **six (6)** years prior to the request (not including disclosures prior to the compliance date of the HIPAA Administrative Simplification and shall be provided for as long as BA maintains the PHI.
8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, BA shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of CE to the Secretary or his or her agents for the purpose of determining CE's compliance with the HIPAA Rules, or any other health oversight agency, or to CE. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by CE or the Secretary.
9. Notice of Privacy Practices. BA shall abide by the limitations of CE's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to CE's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which BA relied prior to receiving notice of such amended Notice.
10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, BA shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Administrative Simplification expressly applies.
11. Knowledge of HIPAA Rules. BA agrees to review and understand the HIPAA Rules as it applies to BA, and to comply with the applicable

requirements of the HIPAA Rule, as well as any applicable amendments.

12. Security Incident. BA agrees to immediately report to the CE any security incident of which BA becomes aware within 72 hours of discovery of the security incident.

E. **TERM AND TERMINATION**

1. Term. The Term of this Agreement shall be effective as of the Effective Date of the Contract, and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon CE's knowledge of a material breach by BA, CE shall either:
 - (a) Provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement and the Contract if BA does not cure the breach or end the violation within the time specified by CE;
 - (b) Immediately terminate this Agreement and the Contract if BA has breached a material term of this Agreement and cure is not possible; or
 - (c) If neither termination nor cure is feasible, CE shall report the violation to the Secretary.
3. Effect of Termination.
 - (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI and shall confirm, in writing, to the CE that all PHI has been returned to the CE or destroyed and, state the method of destruction.
 - (b) In the event that BA determines that returning or destroying the PHI is infeasible, BA shall provide to CE written notification of the conditions that make return or destruction infeasible. Upon discovering that return or destruction of PHI is infeasible, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.

F. **MISCELLANEOUS**

1. **Indemnification.**

(a) To the extent permitted by law, BA agrees to indemnify and hold harmless CE from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by CE arising out of, resulting from, or attributable to any acts or omissions or other conduct of BA or its agents in connection with the performance of BA's or its agents' and/or subcontractor's duties under this Agreement including and not limited to the cost of breach notification under Paragraph D.1.(d) of this Agreement. This indemnity shall not be construed to limit CE's rights, if any, to common law indemnity.

(b) CE shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action described in F(1)(a) above, the costs and expenses of which shall be the responsibility of BA. CE shall provide BA with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist BA in establishing a defense to such action.

(c) These indemnities shall survive termination of this Agreement, and CE reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. **Mitigation.** If BA violates this Agreement or the HIPAA Rules, BA agrees to mitigate any damage caused by such breach, and bear any such related costs.

3. **Rights of Proprietary Information.** CE retains any and all rights to the proprietary information, confidential information, and PHI it releases to BA.

4. **Survival.** The respective rights and obligations of BA under Section (Effect of Termination) of this Agreement shall survive the termination of this Agreement.

5. **Notices.** Any notices pertaining to this Agreement, including breach "Notification to the Covered Entity" made pursuant to Paragraph D1(c) of this Agreement, shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representatives as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be

deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity (for Breach Notification):

Alexandra Vázquez-Sherman (HIPAA Privacy Officer)
Fire Special Investigator
LAFD, Administrative Operations Bureau
Risk Management
200 N. Main Street, Suite 1890
Los Angeles, CA 90012
Tel: (213) 978-3873
Fax: (213) 978-3815

If to Covered Entity LAFD (For all other Matters):

Ralph Terrazas, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
(213) 978-3838
(213) 978-3814 Fax

And:

S. Jenny Park, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, California 90012
(213) 978-3731
(213) 978-3414 Fax

If to Business Associate:

Brian Mendonca, Sr. Finance Director
Stryker Sales Corporation (formerly Physio-Control, Inc.)
11811 Willows Road NE
Redmond, Washington 98052
(800) 442-1142
Email: Brian.Mendonca@stryker.com

And:

Greg Shelton, Legal Counsel
Stryker Sales Corporation
11811 Willows Road

P.O. Box 97006
Redmond, WA 98052
(800) 442-1142
Email: USContracts@stryker.com

6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow CE to comply with the requirements of the HIPAA Rules.
7. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.
8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary; however, CE retains the right to assign or delegate any of its rights or obligations hereunder to any City department or office in a manner consistent with the HIPAA Rules. Assignments made in violation of this provision are null and void.
9. Nature of Agreement. 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, (ii) any fiduciary duty owed by one Party to another party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. Equitable Relief. Any disclosure of misappropriation of PHI by BA in violation of this Agreement will cause CE irreparable harm, the amount of which may be difficult to ascertain. BA therefore agrees that CE shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining BA from any such further disclosure or breach, and for such other relief as CE shall deem appropriate. Such rights are in addition to any other remedies available

to CE at law or in equity. BA expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by CE.

12. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. Headings. The descriptive headings of the articles, sections, subsections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
15. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the HIPAA rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
16. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
17. Original Signatures. This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

For: THE CITY OF LOS ANGELES

DATE: _____

By: _____
RALPH M. TERRAZAS
Fire Chief
Los Angeles Fire Department

For: STRYKER SALES CORPORATION (formerly known as Physio-Control, Inc.)

By:* _____
BRIAN MENDONCA
Sr. Finance Director

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

DATE: _____

By: _____
Judith Thompson
Deputy City Attorney

By:** _____
Name: _____
Title: _____

DATE: _____

DATE: _____

ATTESTED:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

NOTE: If Contractor is a corporation, two signatures are required.

* The signature of President, Chairman of Board, or Vice President is required here **and**

**An additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

Agreement Number: _____

EXHIBIT E

CONTRACTOR/EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT

I understand that my employer, Stryker Sales Corporation, (hereinafter referred to as "Contractor") has entered into a contract with the City of Los Angeles (hereinafter referred to as "City") to provide various services to the City (hereinafter referred to as the "Agreement").

Employee Acknowledgment

I understand that the "Contractor" is my sole employer for purposes of the Agreement between the "Contractor" and the "City".

I understand and agree that I am not an employee of the "City" for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the "City" during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between the "Contractor" and the "City".

Confidentiality Agreement

As an employee of the "Contractor," I may be involved with work pertaining to services provided by the "City", and if so, I may have access to confidential information pertaining to persons or entities represented by the City Attorney's Office or by a designated private law firm thereby creating a confidential attorney/client relationship between the City Attorney's Office or the private law firm and its client. All personnel who perform services pursuant to the Agreement between "Contractor" and the "City" are bound by that confidential relationship, which is set forth in the California Evidence Code, Article 3, and the California Code of Professional Responsibility. In addition, the "City" has a legal obligation to protect all confidential information in its possession, especially medical information and other information that is protected by the attorney/client privilege.

I hereby agree that I will not divulge to any unauthorized person, information obtained while performing work pursuant to the Agreement between "Contractor" and the "City".

I agree to forward all requests for the release of information received by me to my immediate supervisor.

Further, I understand that I am obligated to maintain the confidentiality of medical information provided for data-entry purposes pursuant to the Agreement between "Contractor" and the City of Los Angeles. I understand that I am obligated to maintain the confidentiality of this information at all times, both at work and off duty, in accordance with all State and Federal statutes on confidentiality of medical information.

I acknowledge that violation of this Acknowledgment and Confidentiality Agreement may subject me to civil and/or criminal action and that the City of Los Angeles will seek all possible legal redress.

Signature _____

Date _____

Printed Name _____

Position/Title _____

Exhibit F - Stryker Staff Assignment Table

Staff Assignment for Servicing the City of Los Angeles in EMS FDCS

Project Element	Assigned Staff	Alternative Staff	Responsibilities/Task
<ul style="list-style-type: none"> • Project Director 	<ul style="list-style-type: none"> • Todd Cloney and Kim Malone 	<ul style="list-style-type: none"> • Melissa Lewis and John Proffitt 	<p>Todd Cloney, Director of Sales Operations, and Kim Malone, North American Sales Director for Data Solutions, has overall contractual responsibility for the project, and will provide general oversight for the installation, deployment, and implementation of HealthEMS as the FDCS for LAFD.</p>
<ul style="list-style-type: none"> • Project Manager 	<ul style="list-style-type: none"> • Emmanuel Casillas & Jon Lemmens 	<ul style="list-style-type: none"> • Stephanie Patterson 	<p>Directly reporting to Stephanie will be Emmanuel Casillas and Jon Lemmens as Project Managers. Emmanuel and Jon will be responsible for necessary project coordination, scheduling, system integration, and training materials to complete the installation, deployment, and implementation of HealthEMS, with duties to include but not be limited to the following tasks:</p> <ul style="list-style-type: none"> ➤ Provide overall project coordination to respond to City needs and or inquiries ➤ Maintain control over the work duties, schedule, and performance of the Physio- Control project managers and other team members as well as coordination of any City responsibilities ➤ Supervise the activities of the technical representative(s) and/or Stryker staff assigned to the project
<ul style="list-style-type: none"> • Project Manager (Onsite) 	<ul style="list-style-type: none"> • Emmanuel Casillas and Jon Lemmens 	<ul style="list-style-type: none"> • Stephanie Patterson 	<p>Emmanuel and Jon will be Stryker's primary onsite technical representative and will:</p> <ul style="list-style-type: none"> ➤ Be assigned onsite for the installation, deployment, implementation, and post implementation phases of the

			project
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Project Element	Assigned Staff	Alternative Staff	Responsibilities/Task
			<ul style="list-style-type: none"> ➤ Work closely with the City's Project Manager and EMS Workgroup including regular meetings as appropriate to meet deadlines and complete required work ➤ Assist LAFD in installation, training, and implementation of HealthEMS ➤ Provide project reporting, including project status reports to Stryker and the LAFD EMS Workgroup, as required
<ul style="list-style-type: none"> • Hardware Procurement 	<ul style="list-style-type: none"> • Owned and assigned by LAFD 	<ul style="list-style-type: none"> • Owned and assigned BY LAFD 	Manage procurement of the hardware listed in Exhibit C
<ul style="list-style-type: none"> • Hardware Installation/ Image Creation 	<ul style="list-style-type: none"> • Fareed Assad 	<ul style="list-style-type: none"> • Brian Krueger 	Manage the configuration/imaging of selected hardware.
<ul style="list-style-type: none"> • Software Installation 	<ul style="list-style-type: none"> • Emmanuel Casillas and Jon Lemmens 	<ul style="list-style-type: none"> • Stephanie Patterson 	Emmanuel and Jon will have responsibility for installation of software components associated with the HealthEMS solution, including Mobile, HealthEMS Manager, and Xchanger.
<ul style="list-style-type: none"> • Set Up 	<ul style="list-style-type: none"> • Emmanuel Casillas and Jon Lemmens 	<ul style="list-style-type: none"> • Stephanie Patterson 	Emmanuel and Jon will have responsibility for setup and configuration of the HealthEMS solution as the FDACS for LAFD, including but not limited to Applications settings, HealthEMS Mobile settings, LAFD Agency Information, First Responding Agencies, Shifts, Branches, Users, Employees, Supplies, Medications, Payers, Physicians, Facility Transport Codes, Incident Counties, Incident Cities, Treatment Codes, Resource Codes, Dispatch Codes, Billing/ICD-9/ICD-10 Codes, Labels, Protocols, Vehicles, Devices, Quality Assurance, etc.

Project Element	Assigned Staff	Alternative Staff	Responsibilities/Task
<ul style="list-style-type: none"> • Training 	<ul style="list-style-type: none"> • Emmanuel Casillas and Jon Lemmens 	<ul style="list-style-type: none"> • Stephanie Patterson 	<p>Emmanuel and Jonwill have responsibility for training of LAFD personnel:</p> <ul style="list-style-type: none"> ➤ Address training needs for each different user group ➤ Describe the functions and features of the HealthEMS solution to be taught to each user group as appropriate, including completion of the ePCR, data entry and verification, use of HealthEMS reporting and QA/CQI functionality, HealthEMS system support via the application, including diagnosis of application issues, reporting of problems and problem resolution
<ul style="list-style-type: none"> • Sales/Account Management 	<ul style="list-style-type: none"> • Cassandra Ptak and John Proffitt 	<ul style="list-style-type: none"> • Amber Fink and Kim Malone 	<p>Cassandra and John will have responsibility for overall account management for all Stryker products and services including Data Solutions</p> <ul style="list-style-type: none"> ➤ Address contractual needs ➤ Manage relationship between LAFD and Stryker ➤ Primary liaison for all Stryker teams

Exhibit G

FLEXSAFE ESCROW AGREEMENT

Initial Deposit Account Number 23409

This agreement ("Agreement") is effective **September 1, 2003** between DSI Technology Escrow Services, Inc. ("DSI") and **ScanHealth, Inc** ("Depositor"), who collectively may be referred to in this Agreement as the parties ("Parties") and who are more fully identified in Exhibit A.

A. Depositor and Depositor's client have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as the "License Agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. Depositor desires to establish an escrow with DSI to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.

D. The parties desire this Agreement to be supplementary to the License Agreement pursuant to Chapter 11 United States [Bankruptcy] Code, Section 365(n).

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") to be deposited under this Agreement.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify Depositor regarding the status of the account as required in Section 3.2.

1.3 Acceptance of Deposit. When DSI receives the Deposit Materials, DSI will conduct a visual deposit inspection. At completion of the deposit inspection, if DSI determines that the labeling of the media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. **OTHER THAN DSI'S INSPECTION OF THE DEPOSIT MATERIALS, DSI SHALL HAVE NO OBLIGATION TO THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NON-PERFORMANCE OF THE DEPOSIT MATERIALS.**

1.4 Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to DSI the rights as provided in this Agreement;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of any liens or encumbrances; however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of DSI under this Agreement; and
- d. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.5 Deposit Updates. Updates to the Deposit Materials will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and Depositor shall sign the new Exhibit B. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. Any deposit updates shall be held in accordance with Sections 1.2 through 1.4. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.6 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor or as otherwise provided in this Agreement.

ARTICLE 2 -- FLEXSAFE BENEFICIARY ENROLLMENTS

2.1 FlexSAFE Enrollment(s). After DSI's acceptance of the Deposit Materials, Depositor may enroll one or more beneficiaries ("FlexSAFE_Beneficiary") under this Agreement. Depositor will execute and submit to DSI a FlexSAFE Beneficiary Enrollment document, referenced in this Agreement as Exhibit T, listing each beneficiary to be enrolled as a FlexSAFE Beneficiary under the Agreement. Upon DSI's receipt of Exhibit T or any additional Exhibit T thereto, DSI will issue an enrollment letter and a copy of this Agreement to the FlexSAFE Beneficiary.

ARTICLE 3 -- CONFIDENTIALITY AND RECORD KEEPING

3.1 Confidentiality. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, DSI shall not disclose, transfer, make available or use the Deposit Materials. DSI shall not disclose the terms of this Agreement to any third party. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or FlexSAFE Beneficiary to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a

court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 8.6 below.

3.2 Status Reports. DSI shall provide to Depositor and FlexSAFE Beneficiary a report profiling the account history semi-annually. Depositor will notify DSI if the account history is not to be provided to FlexSAFE Beneficiary.

ARTICLE 4 -- RIGHT TO MAKE COPIES

4.1 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including but not limited to the hardware and/or software needed. Any copying expenses incurred by DSI as a result of a request to copy will be borne by the party requesting the copies. Alternatively, DSI may notify Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for DSI to perform this Agreement.

ARTICLE 5 -- RELEASE OF DEPOSIT

5.1 Release of Deposit Upon Depositor's Instruction. Upon receipt by DSI of written instruction(s) directly from Depositor, Depositor's trustee in bankruptcy or a court of competent jurisdiction, DSI will release a copy of the Deposit Materials to the FlexSAFE Beneficiary identified in the instruction(s). However, DSI is entitled to receive any fees due DSI before making the release. FlexSAFE Beneficiary's enrollment will terminate upon the release of the Deposit Materials held by DSI.

5.2 Filing for Release of Deposit by FlexSAFE Beneficiary.

- a. Upon notice to DSI by FlexSAFE Beneficiary of the occurrence of a release condition as defined in Section 5.3, DSI shall provide Depositor with a copy of FlexSAFE Beneficiary's notice by commercial express mail. Such notice from FlexSAFE Beneficiary will be signed and on company letterhead. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have sixty (60) days to deliver to DSI contrary instructions ("Contrary Instructions").

Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Such notice shall be signed and on company letterhead. Upon receipt of Contrary Instructions, DSI shall send a copy of the Contrary Instructions to FlexSAFE Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and FlexSAFE Beneficiary that there is a dispute to be resolved pursuant to Section 8.4. Subject to Section 6.3, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and FlexSAFE Beneficiary; (b) dispute resolution pursuant to Section 8.4; or (c) order of a court.

- b. If no Contrary Instructions are given to DSI, Depositor agrees that DSI shall deliver a copy of the Deposit Materials to the FlexSAFE Beneficiary who provides DSI with all of the following:
1. Copy of the current License Agreement between Depositor and FlexSAFE Beneficiary;
 2. Written demand that a copy of the Deposit Materials be released and delivered to FlexSAFE Beneficiary;
 3. Written notice that the copy of the Deposit Materials being released to FlexSAFE Beneficiary only be used as permitted under the License Agreement;
 4. Specific delivery instructions along with any fees due DSI; and
 5. Written notice that the release of the copy of the Deposit Materials is pursuant to Chapter 11 United States Code Section 365(n) or other applicable federal or state bankruptcy, insolvency, reorganization or liquidation statute.

5.3 Release Conditions. As used in this Agreement, "Release Condition" shall mean the existence of any one or more of the following circumstances, uncorrected for more than thirty (30) days:

- a. Entry of an order for relief under Chapter 11 of the United States Bankruptcy Code;
- b. The making by Depositor of a general assignment for the benefit of creditors;
- c. The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property; or
- d. Action by Depositor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

5.4 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Article 5, FlexSAFE Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to FlexSAFE Beneficiary by the License Agreement. FlexSAFE Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

ARTICLE 6 -- TERM AND TERMINATION

6.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year to year unless (a) Depositor instructs DSI in writing that the Agreement is terminated; (b) DSI instructs Depositor and FlexSAFE Beneficiary in writing after its renewal date that the Agreement is terminated for

nonpayment in accordance with Section 6.3; or (c) DSI reserves the right to terminate this Agreement, for any reason, other than nonpayment, by providing Depositor and FlexSAFE Beneficiary sixty (60) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

6.2 Term of FlexSAFE Enrollment. Upon receipt by DSI of Depositor's executed Exhibit T, the FlexSAFE Beneficiary will be enrolled for an initial term of one (1) year, unless this Agreement terminates earlier, causing the FlexSAFE Beneficiary enrollment to terminate. Subsequent enrollment terms may be adjusted to the anniversary date of this Agreement and shall automatically renew from year-to-year unless (a) Depositor instructs DSI in writing to terminate the FlexSAFE Beneficiary enrollment; (b) FlexSAFE Beneficiary instructs DSI in writing to terminate the FlexSAFE Beneficiary; or (c) the enrollment is terminated by DSI for nonpayment in accordance with Section 6.3.

6.3 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties to this Agreement. Unless Depositor has instructed DSI to terminate FlexSAFE Beneficiary pursuant to Section 6.2(a), Depositor or FlexSAFE Beneficiary shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one (1) month of the date of such notice, then DSI shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

6.4 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the FlexSAFE Beneficiary in accordance with Section 5.2.

6.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. The obligations of confidentiality with respect to the Deposit Materials;
- b. The obligation to pay DSI any fees and expenses due;
- c. The provisions of Article 8; and
- d. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 7 -- DSI'S FEES

7.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least sixty (60) days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

7.2 Payment Terms. DSI shall not be required to perform any service, including release of any Deposit Materials under Article 5, unless the payment for such service and any outstanding balances owed to DSI are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 6.3.

ARTICLE 8 -- LIABILITY AND DISPUTES

8.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of Depositor or FlexSAFE Beneficiary who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

8.2 Indemnification. Depositor agrees to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement, except where it is adjudged that DSI acted with gross negligence or willful misconduct.

8.3 Limitation of Liability. In no event will DSI be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits), costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of DSI exceed ten times the fees paid under this Agreement. The foregoing limitation of liability does not apply with respect to any acts of gross negligence, personal injury claims, property damage claims (excluding the Deposit), or intellectual property infringement.

8.4 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by a single arbitrator chosen by the San Diego Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply California law. Unless otherwise agreed by Depositor and FlexSAFE Beneficiary, arbitration will take place in San Diego, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If however, Depositor and/or FlexSAFE Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and DSI may submit the matter to any court of competent jurisdiction. Unless adjudged otherwise, any costs of arbitration incurred by DSI, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and FlexSAFE Beneficiary.

8.5 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

8.6 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other duties.

ARTICLE 9 -- GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement, which includes Exhibits described herein, embodies the entire understanding between the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and FlexSAFE Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or FlexSAFE Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by both parties hereto, except Exhibit A need not be signed by either party.

9.2 Notices. All notices sent pursuant to Articles 5 and 6 and any Deposit Materials shall be delivered by commercial express mail or sent by certified mail, return receipt requested. All other correspondence including invoices, payments, documents and communications shall be sent First Class U.S. mail and given to the parties at the addresses specified in the attached Exhibit A. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of physical address or e-mail address. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services.

9.3 Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

9.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

9.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

9.6 Regulations. Depositor is responsible for and warrants compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

9.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement (whether in contract, tort, or both), the prevailing party who has proven in court by court decree, judgment or arbitrator's decision that the other party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgement.

9.8 No Third Party Rights. This Agreement is made solely for the benefit of the Depositor and any enrolled FlexSAFE Beneficiaries to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

9.9 Authority to Sign. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

ScanHealth, Inc

By: 

Name: Kevin Noreen

Title: CFO

Date: 7/23/03

DSI Technology Escrow Services, Inc.

By: 

Name: FRANK A. BRUNO

Title: REGIONAL SALES MANAGER

Date: 8/5/03

DESIGNATED CONTACT

Deposit Account Number _____

Notices, deposit material returns and communications to Depositor should be addressed to:

ScanHealth, Inc
11 E Superior Street, Suite 310
Duluth, MN 55802

Designated Contact: Kevin Noreen
Telephone: 218.625.7226
Facsimile: 218.625.7225
E-mail: kanoreen@scanhealth.com

Invoices to Depositor should be addressed to:

20268

ScanHealth, Inc
11 E Superior Street, Suite 310
Duluth, MN 55802

Contact: Accounts Payable
P.O.#, if required None

Requests from Depositor to change the designated contact should be given in writing by the designated contact or an authorized employee.

DSI has two Operations Centers to serve you. Agreements, Deposit Materials and notices to DSI should be addressed to: (select location)

Ø Attn: Client Services
9265 Sky Park Court, Suite 202
San Diego, CA 92123
Telephone: (858) 499-1600
Facsimile: (858) 694-1919
E-mail: clientservices@dsiescrow.com

All invoice fee remittances to DSI should be addressed to:

DSI Technology Escrow Services
P.O. BOX 27131
New York, NY 10087-7131

Or

Ø Attn: Client Services
2100 Norcross Parkway, Suite 150
Norcross, GA 30071
Telephone: 770-239-9200
Facsimile: 770-239-9201
E-mail: clientservices@dsiescrow.com

Date: 7/23/03

ADDITIONAL ESCROW ACCOUNT

Master FlexSAFE Depositor Company Number 23409

New Deposit Account Number 2340

ScanHealth, Inc ("Depositor") has entered into a FlexSAFE Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the initial account. By execution of this Exhibit E, DSI will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name: **HealthEMS**.

Depositor hereby agrees that all terms and conditions of the existing FlexSAFE Escrow Agreement previously entered into by Depositor and DSI will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

ScanHealth, Inc

DSI Technology Escrow Services, Inc.

By: 

By: 

Name: Kevin Noreen

Name: FRANK A. BRUNO
REGIONAL SALES MANAGER

Title: CFO

Title: _____

Date: 7/23/03

Date: 8/5/03

FLEXSAFE BENEFICIARY ENROLLMENT

Account Number # 23410-20268

Pursuant to the FlexSAFE Escrow Agreement ("Agreement"), Depositor hereby enrolls the following as a FlexSAFE Beneficiary:

THE CITY OF LOS ANGELES

Notices and communications to FlexSAFE Beneficiary should be addressed to:

Company Name: CITY OF LOS ANGELES
Address: 200 N. MAIN STREET
6TH FLOOR
LOS ANGELES CA 90012

Designated Contact: LAUREL LIGHTNER
Telephone: 213.978.8100
Facsimile: 213.978.8310
E-Mail: LAUREL.LIGHTNER@LACITY.ORG

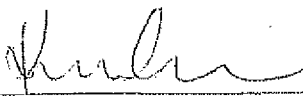
Invoices to FlexSAFE Beneficiary should be addressed to:

SANSIO (SCANHEALTH, INC.)
PO BOX 3470
DULUTH, MN 55803


Contact: KEVIN NOREEN, CFO

P.O.#, if required: 2010-2034

SCANHEALTH, INC., DBA SANSIO
Depositor

By: 
Name: KEVIN A. NOREEN
Title: CFO
Date: 8/31/2010

Iron Mountain Intellectual Property Management

By: 
Name: Adelinda Farombi
Title: Members Administrator
Date: 9/3/10