

MEMORANDUM

June 15, 2010

TO: Board of Mayor and Aldermen

FR: City Administrator Eric S. Stuckey
Assistant City Administrator Russell Truell
Fire Chief Rocky Garzarek

RE: Maintenance Agreement for Defibrillator/Cardiac Monitors

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider the renewal the cardiac monitor maintenance agreement for an additional year with an effective date of June 1, 2010.

Background

The Fire Department purchased a maintenance agreement along with its initial purchase of cardiac related monitors. This agreement has a one (1) year term limit and is renegotiated at the end of the renewal period. In addition, newly purchased equipment whose warranty period has expired is included in the scope of work.

As the maintenance services must necessarily be performed by the manufacturer of the equipment, this is a sole-source purchase. Physio-Control, Inc. has indicated in writing that only the manufacturer is qualified to perform the scope of services indicated. Physio-Control, Inc. has also indicated in writing that the quoted pricing represents the best municipal pricing available at this time for the scope of services indicated.

Financial Impact

The Fire Department budget for fiscal year 2010 allocates \$10,000 out of the General Fund for repair and maintenance services. This is an 18% increase (\$1,760.47) over the budgeted amount but will not require a budget amendment. Assistant Chief Todd Horton is of the opinion that the quoted pricing is within what would be expected in the market place for this industry at this time.

Recommendation

It is recommended that the City accept the pricing from Physio-Control in the amount of \$11,760.47 for cardiac monitor maintenance services in accordance with the agreement.



Physio-Control, Inc.
11811 Willows Road NE, P.O. Box 97006, Redmond, WA 98052
Tel 425.867.4000 Toll-free 800.442.1142

www.physio-control.com

Date: 1 June 2010

ATTN: Todd Horton
Franklin Fire Dept

Physio Control recommends that only biomedical personnel trained by Physio Control should attempt to service Medtronic/Physio Control defibrillators and monitors. Additionally, the software required to do repairs is only available to team members of Physio Control. I, Matt Greene, am Physio Control's sole qualified representative for the Middle Tennessee and Western Kentucky regions.

The price for the scopes of service in your Service Agreement Renewal quote reflects Physio Control's best municipal pricing and has not changed since May 2008. The overall price increase since last year's Service Agreement is due to 2 new monitors being added.

A new pricing schedule will replace the May 2008 schedule and is set to take effect within the next month. It will be an approximate 3% increase for all scopes of services, but the quote (\$62-1811 for \$11,760.47) provided to Franklin Fire under the old pricing will still be honored if it goes into affect within the next 30 days.

Thank you for allowing us to be partners in healthcare. If you should have any questions, please feel free to contact me at 615-335-5111 (cell).

Sincerely,
Physio-Control, Inc.

Matt Greene
Technical Service Representative



TECHNICAL SERVICE SUPPORT AGREEMENT

Contract Number:

End User # 12272501
FRANKLIN FIRE DEPARTMENT
109 3RD AVE S
SUITE 133
FRANKLIN, TN 37064

Bill To # 12272501
FRANKLIN FIRE DEPARTMENT
109 3RD AVE S
SUITE 133
FRANKLIN, TN 37064

This Technical Service Support Agreement begins on 6/1/2010 and expires on 5/31/2011.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached.

Price of coverage specified on Schedule A is \$11,760.47 per term, payable in Annual installments.

Special Terms

10% DISCOUNT ON ACCESSORIES
5% DISCOUNT ON ECG ELECTRODES

Accepted: Physio-Control, Inc.

Customer: Franklin Fire Dept

By: _____

By: _____

Title: _____

Print: _____

Date: _____

Title: _____

Date: _____

Purchase Order Number: _____

Territory Rep: EASS62
Greene, Matthew
Phone:
FAX: 800-772-3340

Customer Contact:
Sarah Glenn
Phone: 615-791-3270
FAX: 615-591-5615

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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT TERMS AND CONDITIONS

RENEWAL TERMS

Physio-Control, Inc.'s ("Physio-Control") acceptance of Customer's Technical Service Support Agreement is expressly conditioned on Customer's assent to the terms set forth in this document and its attachments. Physio-Control agrees to furnish the services ordered by Customer only on these terms, and Customer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by Customer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on Customer's purchase order or on other documents submitted to Physio-Control by Customer. These terms may not be revised in any manner without the prior written consent of an officer of Physio-Control.

REPAIR SERVICES

If "Repair" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, all repair parts and materials required, all required Physio-Control service technician labor, and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

INSPECTION SERVICES

If "Inspection" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, verification of proper instrument calibration, verification that instrument mechanical operations and output measurements are consistent with applicable product specifications, performance of an electrical safety check in accordance with National Fire and Protection Guidelines, all required Physio-Control service technician labor and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio-Control freight prepaid.

DOCUMENTATION

Following each Repair and/or Inspection, Physio-Control will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement.

LOANERS

If a Physio-Control product is designated as a unit of Covered Equipment for Repair Services and needs to be removed from service to complete repairs, an appropriate Loaner unit will be provided, if available, until the removed unit is returned. Customer assumes complete responsibility for the Loaner and shall return the Loaner to Physio-Control in the same condition as received, at Customer's expense, upon the earlier of the return of the removed unit or Physio-Control's request.

EXCLUSIONS

This Technical Service Support Agreement does not include: supply or repair of accessories or disposables (e.g., patient cables, recorder paper, etc.); repair of damage caused by misuse, abuse, abnormal operating conditions, operator errors, and/or acts of God; repairs to return an instrument to normal operating equipment at the time of initial service by Physio-Control under this Technical Service Support Agreement; case changes; repair or replacement of items not originally distributed or installed by Physio-Control; and exclusions on Schedule B to this Technical Service Support Agreement, if any, which apply to Covered Equipment.

SCHEDULE SERVICES

Designated Repair and Inspections Services will be performed at the designated service frequency and during designated service hours except where service technicians are rendered unavailable due to mandatory training commitments, in which case Physio-Control will provide alternate coverage. Customer is to ensure Covered Equipment is available for Repair and/or Inspection at scheduled times. If Covered Equipment is not available as scheduled and Customer requests additional services to be performed or if Physio-Control is requested to perform Repair or Inspection services not designated in this Technical Service Support Agreement (due to the nature of services selected, instruments involved not being Covered Equipment, request being outside of designated service frequency or hours, or application of the Exclusions); Customer shall reimburse Physio-Control at Physio-Control's standard labor rates less 10% (including overtime, if appropriate), plus standard list prices for related parts and materials less 15%, plus actual travel costs incurred.

PAYMENT

The cost of services performed by Physio-Control shall be payable by Customer within thirty (30) days of Customer's receipt of Physio-Control's Invoice (or such other terms as Physio-Control confirms to Customer in writing). In addition to the cost of services performed, Customer shall pay or reimburse Physio-Control for any taxes assessed Physio-Control. If the number or configuration of Covered Equipment is altered during the Term of this Technical Service Support Agreement, the price of Services shall be adjusted accordingly.

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WARRANTY

Physio-Control warrants Services performed under this Technical Service Support Agreement and replacement parts provided in performing such Services against defects in material and workmanship for ninety (90) days from the date a Service was performed or a part was provided. Customer's sole remedy shall be reservicing the affected unit and/or replacement of any part determined to be defective, without any additional Customer charge, provided Customer notifies Physio-Control of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio-Control makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.**

TERMINATION

Either party may terminate this Technical Service Support Agreement at any time upon sixty (60) days prior written notice to the other, except that Physio-Control may terminate this Technical Service Support Agreement immediately upon Customer's failure to make timely payments for services rendered under this Technical Service Support Agreement. In the event of termination, Customer shall be obligated to reimburse Physio-Control for that portion of the designated price which corresponds to that portion of the Term and the scope of Services provided prior to the effective date of termination.

DELAYS

Physio-Control will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license or permit, and Physio-Control's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control's obligations and the performance dates shall be extended for the length of such delay.

MISCELLANEOUS

- a) Customer agrees to not employ or offer employment to anyone performing Services on Physio-Control's behalf during the Term of this Technical Service Support Agreement or for one (1) year following its expiration without Physio-Control's prior written consent.
- b) This Technical Service Support Agreement, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party.
- c) The rights and obligations of Physio-Control and Customer under this Technical Service Support Agreement shall be governed by the laws of the State in which the service is provided.

Miscellaneous II

The City of Franklin standard Procurement Terms and Conditions, attached hereto, are hereby incorporated herein as if fully set forth herein. Any provision thereof in conflict with any provision above shall govern.

.....
.....END.....

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

Contract Number:

Servicing Rep: Greene, Matthew, EASS62

District: SOUTHERN

Phone:

FAX: 800-772-3340

Equipment Location: FRANKLIN FIRE DEPARTMENT, 12272501
 109 3RD AVE S
 SUITE 133
 FRANKLIN, TN 37064

Scope Of Service AED 1 On Site Inspection per Year with 1 Lithium Battery

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 500	3011790-001131	32820315	3	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820316	4	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820317	5	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820318	6	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820319	7	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820320	8	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820321	9	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820322	10	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820323	11	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820324	12	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820325	13	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820326	14	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820327	15	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820328	16	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820314	17	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001129	31656538	18	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-000113	14297760	19	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-000113	14251169	20	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820329	27	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820330	28	6/1/2010	5/31/2011	1
LIFEPAK® 500	3011790-001131	32820331	29	6/1/2010	5/31/2011	1

Scope Of Service On Site Repair and 1 On Site Inspection per Year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-007228	38155901	30	8/3/2010	5/31/2011	1
LIFEPAK® 12	VLP12-02-007228	38266106	31	9/20/2010	5/31/2011	1
LIFEPAK® 12	VLP12-02-005985	34470705	22	6/1/2010	5/31/2011	1
LIFEPAK® 12	VLP12-02-005985	34476864	23	6/1/2010	5/31/2011	1

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LIFEPAK® 12	VLP12-02-005985	34486666	24	6/1/2010	5/31/2011	1
LIFEPAK® 12	VLP12-02-007228	36170042	2	6/1/2010	5/31/2011	1

Scope Of Service On Site Repair Only: M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	36107406	1	6/1/2010	5/31/2011	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	34487355	25	6/1/2010	5/31/2011	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	34491678	26	6/1/2010	5/31/2011	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	34452950	21	6/1/2010	5/31/2011	0

** Denotes an inventory line that has changed since the last contract revision or addendum.

MEDTRONIC EMERGENCY RESPONSE SYSTEMS, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:
Additional Items

Service Type	Item	Quantity	Start Date	End Date
CASE CHANGE	LP12/15/20 CASE CHG 1-5	1	6/1/2010	5/31/2011

** Denotes an additional item line that has changed since the last contract revision or addendum.

PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 12 (LP 12) Defibrillator/Monitor Includes:

Standard detachable hard paddle repairs

LP12 upgrade installed by Physio-Control Technical Services Representative at a rate of 17% less than the then current field-installed list price

When listed in Equipment Inventory, Schedule A, LP 12 Defibrillator/Monitor Includes:

AC Power Adapter
DC Power Adapter

LP 12 Defibrillator/Monitor Excludes:

Internal, sterilizable and pediatric paddles
SpO2 sensors and cables
Communication cables
Therapy cables
Patient cables
PCMCIA modems
Case changes

Discounts will not be combined with other special terms, discounts, and/or promotions.

Physio-Control FASTPAK®, FASTPAK 2, LIFEPAK SLA, and LIFEPAK NiCd Battery

Battery maintenance, performance testing, evaluation, removal, recycling, and replacement are the responsibility of the Customer, and should be performed in accordance with the LP 12 Series Operating Instructions section entitled Discarding/Recycling Batteries.

Batteries replacement is available on a one-for-one basis, up to the number of devices listed in Equipment Inventory, Schedule A, upon the earlier of either (i) reported battery failure as determined by Customer's performance testing and evaluation in accordance with the LP 12 Operating Instructions section entitled Discarding/Recycling Batteries, or (ii) upon completion of the second year of use. Replacement Battery Pak shall be like for like, i.e. FASTPAK for FASTPAK, FASTPAK 2 for FASTPAK 2, etc. During the Term of this Agreement replacement shall occur no more than four times per two year period, notwithstanding prior Support Plans.

Battery replacement is dependent upon Customer's notice to Physio-Control of the existence of either of the conditions referenced in (i) and (ii) above. At the discretion of Physio-Control, battery replacement shall be effected by shipment to Customer and replacement by Customer, or by on-site delivery and replacement by a Physio-Control Service Technician. Upon Customer's receipt of replacement battery, the affected battery referenced above shall become the property of Physio-Control, and must be returned to Physio-Control for proper disposal. In the event that Physio-Control does not receive the affected battery referenced above, Customer will be charged at the then current rate for the replacement battery.

Only batteries manufactured by Physio-Control are covered under this Service Agreement. Batteries not manufactured by Physio-Control are expressly excluded from coverage under this Service Agreement. Physio-Control does not guarantee the operation, safety, and/or performance of our product when operating with a battery not manufactured by Physio-Control. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a battery manufactured by Physio-Control. Any repairs, as determined by a Physio-Control Service Representative, resulting from the use of a battery not manufactured by Physio-Control, will be billed at Physio-Control's then current standard list prices for parts and labor, including actual travel costs incurred.

LIFEPAK 12 Software Updates

If combined Repair and Inspection services are designated for LP 12 units listed in Schedule A, a Physio-Control Technical Services Representative will install LP 12 software updates at no additional cost, provided it is installed at the time of a regularly scheduled inspection. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then current list price. Software updates, when installed at a time other than the regularly scheduled inspection, will be billed at the rate of \$205.00 per unit per software update. The cost of such software update will be billed in a separate invoice. Dependent upon availability of Customer software loading tool, and at Customer's request, Technical Services Representative shall provide Customer

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PHYSIO-CONTROL, INC.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

access to software loading tool at no additional charge.

If Repair-Only services are designated for LP 12 units listed in Schedule A, a Physio-Control Technical Services Representative will install a LP 12 software update at the rate of \$205.00 per unit per software update. In addition, during the Term of this Agreement, where an assembly, i.e., printed circuit board, must be replaced to accommodate installation of new software, such assembly may be purchased by the Customer at a rate of 50% less than the then current list price. The cost of such software update will be billed in a separate invoice. Dependent upon availability of Customer software loading tool, and at Customer's request, Technical Services Representative shall provide Customer access to software loading tool at no additional charge.

Physio-Control will replace the internal coin cell battery according to the number of such batteries listed in the Additional Items section of Schedule A. It is the Customer's responsibility to request such coin cell battery replacement, gather in a single location the devices that will receive such battery replacement, and to provide to the Physio-Control Technical Services Representative access to those devices. Coin cell battery replacement will take place during the Term of this Agreement, according to the number of coin cell batteries listed in the Additional Items section of Schedule A.

LIFEPAK® 500 AED INSPECTION-ONLY WITH BATTERY OPTION

- This plan includes periodic inspections as described on Schedule A. If any repairs are requested by customer that are not otherwise covered by warranty then customer shall pay Physio-Control at its then current labor rate less 10%. Parts required for such repairs will be at 15% less than the then current list price for the parts.
- Customer retains the responsibility to perform the battery maintenance and evaluation procedures outlined in the service manual and to replace batteries that do not pass the conditions outlined under "Discarding/Recycling Batteries." Batteries failing to meet battery performance tests should be removed from service and properly discarded (recycled).
- If customer provides evidence that a Physio-Control Battery Pak fails to meet the performance tests noted above and/or the Battery Pak age exceeds 2 years in the case of sealed lead acid batteries and 3 years in the case of lithium ion batteries, Physio-Control shall replace said Physio-Control Battery Pak (like for like) i.e. LIFEPAK 500 SLA for LIFEPAK 500 SLA or LIFEPAK 500 lithium ion for LIFEPAK 500 lithium ion, up to a maximum of 2 LIFEPAK 500 SLA Battery Paks every two years or up to a maximum of 1 LIFEPAK 500 lithium ion Battery Pak every 3 years (including prior Support Plan periods) per LIFEPAK® 500 automatic advisory defibrillator (listed on Schedule A). To assist in proper recycling and removal of low capacity batteries, replaced Battery Paks become the property of Physio-Control and must be returned at the time of exchange.
- Only batteries manufactured by Physio-Control are covered under this Service Agreement. Any batteries manufactured by other sources are expressly excluded from coverage under this Service Agreement. Physio-Control cannot guarantee the operation, safety and/or performance of our product when operating with a non-Physio-Control battery. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a Physio-Control battery. Any repairs, as determined by a Physio-Control Service Representative, resulting from the use of a non-Physio-Control battery, will be billed at our standard list prices for parts and labor, including actual travel charges incurred.
- Inspections are performed Monday thru Friday 8am to 5pm (excluding holidays).

Addendum to Technical Service Support Agreement With Physio-Control, Inc.

This addendum shall modify and supersede the attached document Technical Service Support Agreement Renewal (the "Agreement") and entered into on the ____ day of _____, 2010, by the City of Franklin, Tennessee and Physio-Control, Inc. ("Vendor"). The Agreement together with this Addendum and the attached document(s) constitute the entire agreement ("Contract"). Acceptance of payment as stated in the Agreement constitutes Vendor's acceptance of all terms and conditions stated herein.

Standard Terms and Conditions

1. **Confidentiality.** Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, to the extent of Vendor's negligence, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
2. **Warranties/Limitation of Liability/Waiver.** The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
3. **Arbitration/Mediation.** No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
4. **No Taxes, No Interest Payments.** As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
5. **Notices.** Any notice provided pursuant to the Contract, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set

Addendum to Technical Service Support Agreement With Physio-Control, Inc.

forth in such other document which the Agreement or this Addendum may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin
Attn: Franklin Fire Department
109 Third Ave. South
Suite 133
Franklin, TN 37065-0305
FAX: 615/791-3270
E-mail: _____

In the case of Vendor:

Physio-Control, Inc.
Service Contracts Department
11811 Willows Road NE
P.O. Box 97006
Redmond, WA 98073

6. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
7. Severability. If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract will not be affected.
8. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Addendum.
9. Entire Agreement. The Contract between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Contract. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this Addendum by section number and signed by an authorized representative of each party.
10. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate

Addendum to Technical Service Support Agreement With Physio-Control, Inc.

the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

11. Applicable Law; Choice of Forum/Venue. The Contract constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.
12. Breach. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract, after notice to the breaching party and an opportunity to cure the breach within thirty (30) days of such notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.
13. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.