

Flex Financial, a division of Stryker Sales Corporation  
1901 Romence Road Parkway  
Portage, MI 49002  
t: 1-888-308-3146 f: 877-204-1332  
www.stryker.com



Date: November 26, 2019

RE: Reference no: 0110077950

Pompano Beach, City Of  
120 SW 3RD ST  
POMPANO BEACH, Florida 33060-7900

Thank you for choosing Flex Financial, a division of Stryker Sales Corporation, for your equipment financing needs. Enclosed please find the financing documents necessary to enter into the financing arrangement. Once all of the documents are completed, properly executed and returned to us, we will issue an order for release of the financed equipment.

**PLEASE COMPLETE ALL ENCLOSED DOCUMENTS TO EXPEDITE THE SHIPMENT OF YOUR ORDER.**

**Short Form Lease Agreement  
Exhibit A - Detail of Equipment  
Rider to Short Form Lease Agreement**

**\*\*Conditions of Approval: Customer PO, Tax Exemption Certificate**

**PLEASE PROVIDE THE FOLLOWING WITH THE COMPLETED DOCUMENTS:**

<b>Federal tax ID number:</b>	_____	<b>AP address:</b>	_____
<b>Purchase order number:</b>	_____	<b>Contact name:</b>	_____
<b>Phone number:</b>	_____	<b>Email address:</b>	_____

**Please fax completed documents to (877) 204-1332. Return original documents to 1901 Romence Road Parkway Portage, MI 49002 (using Fed-Ex Shipping ID# 612-309469)**

Your personal documentation specialist is Curtis Orr and can be reached at 269-389-1437 or by email [curtis.orr@stryker.com](mailto:curtis.orr@stryker.com) for any questions regarding these documents.

The financing proposal evidenced by these documents is valid through the last business day of **November, 2019**

Sincerely,

**Flex Financial, a division of Stryker Sales Corporation**

**Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents. For your records, the federal employer identification number for Flex Financial, a Division of Stryker Sales Corporation is 38-2902424.**

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## Short Form Lease Agreement No. 0110077950

Owner ("we" or "us") :

Flex Financial, a division of Stryker Sales Corporation  
1901 Romence Road Parkway  
Portage, MI 49002

Customer name and address ("You" and "Your"): Pompano Beach, City Of 120 SW 3RD ST POMPANO BEACH, Florida 33060-7900	<b>Equipment location:</b> 120 SW 3RD ST, POMPANO BEACH, Florida 33060-7900 <b>Supplier:</b> Stryker Sales Corporation, 3800 E. Centre Ave, Portage, MI 49002 <b>Equipment description:</b> (see attached Exhibit A which is a part of this Agreement.)
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### Payment information

# of lease payments	Payment frequency	Lease payment	Terms of Agreement in months: 37 Equipment purchase option: \$1 Buyout Option Equipment purchase option shall be FMV unless another option is stated above.			
1	Annual	\$74,000.00 (First payment due 30 days after Agreement is commenced), (plus applicable sales/use taxes - see "Taxes" section below) followed by:	Security deposit	First period payment	Other	Total payment enclosed
			\$0.00	+ \$0.00	+ \$ 0.00	= \$ 0.00
3	Annual	\$82,446.83 (plus applicable sales/use taxes - see "Taxes" section below)				

**1. Lease:** You ("Customer") agree to lease from us ("Owner") the equipment (including software and/or software license fees ("Software"), if any, "Equipment") listed above and on any attached schedule in accordance with the terms of this Agreement (this "Agreement"). This Agreement starts on the day the Equipment is delivered to you ("Commencement Date") and continues for the number of months described above (the "Term"). The Lease Payments ("Payments") shall be payable beginning on the Commencement Date or any later date we designate and thereafter until all fully paid. **Your obligations under this Agreement ("Obligations") are absolute, unconditional, and are not subject to cancellation, defense, recoupment, reduction, setoff or counterclaim.** If a Payment is not made when due, you will pay us a late charge of 5% for each Payment or \$10.00, whichever is greater. We may charge you a fee of \$55.00 for any check that is returned. You authorize us to adjust the Payments at any time if taxes included in the Payments differ from our estimate. You agree that the Payments were calculated by us based, in part, on an interest rate equivalent as quoted on the Intercontinental Exchange website, at <https://www.theice.com/marketdata/reports/180>, under the USD Rates 1100 Series, that would have a repayment term equivalent to the Term (or an interpolated rate if a like-term is not available) as reasonably determined by us and in the event the Term of this Agreement starts more than 30 days after we send this Agreement to you, we may adjust the Payments once to compensate us, in good faith, for any increase in such rate. You shall be deemed to have accepted the Equipment for lease hereunder upon the date that is ten (10) days after it is shipped to you by the Supplier and, at our request, you shall confirm for us such acceptance. No acceptance of any item of Equipment may be revoked by you.

**2. Title and laws:** Unless you have a \$1.00 purchase option, we own the Equipment and you have the right to use the Equipment during the Term, provided you comply with the terms of this Agreement. If you have a \$1.00 purchase option or this Agreement is deemed to be a security agreement, you grant us a security interest in the Equipment and all proceeds therefrom, and authorize us to file financing statements on your behalf. You agree not to permit any lien, claim or encumbrance to be placed upon the Equipment. You shall comply with all applicable laws, rules and regulations and manufacturer's specifications and instructions concerning the operation, ownership, use and/or possession of the Equipment.

**3. Equipment use, maintenance and warranties:** Any assignee (as defined below) is leasing the Equipment to you "AS-IS" AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You must, at your cost, keep the Equipment in good working condition. If Payments include maintenance and/or service costs, you agree that (i) no Assignee is responsible to provide the maintenance or service, (ii) you will make all maintenance and service related claims to the persons providing the maintenance, service or warranty, and (iii) any maintenance, warranty or service claims will not impact your Obligations. The Equipment cannot be moved from the location above without our prior written consent. **STRYKER SALES CORPORATION (INCLUDING FLEX FINANCIAL, A DIVISION OF STRYKER SALES CORPORATION, ITS DIVISION) MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY EQUIPMENT. This Agreement will not impair any express warranties or indemnifications or other obligations of Stryker Corporation or any of its subsidiaries to you regarding the Equipment and we hereby assign all of our rights in any Equipment warranties to you.**

**4. Assignment:** You agree not to transfer, sell, sublease, assign, pledge or encumber the Equipment or any rights under this Agreement without our prior written consent, which consent shall not be unreasonably withheld, and if you do, even with our consent, you will still be fully responsible for all your Obligations. You shall provide us with at least 45 days' prior written notice of any change to your principal place of business, organization or incorporation. You agree that we may, without notice to you, sell, assign, or transfer ("Transfer") this Agreement to a third party (each, an "Assignee"), and each Assignee will have our Transferred rights, but none of our obligations, and such rights **will not be subject to any claims, recoupment, defenses, or setoffs that you may have against us or any supplier** even though an Assignee may continue to bill and collect all of your Obligations in the name of "Flex Financial, a division of Stryker Sales Corporation".

**5. Risk of loss, insurance and reimbursement:** Effective upon delivery to you and continuing until the Equipment is returned to us in accordance with the terms of this Agreement, you shall bear all risk of Equipment loss or damage. If any such loss or damage occurs you still must satisfy all of your Obligations. You will (i) keep the Equipment insured against all risks of loss or damage for an amount equal to its replacement cost, (ii) list us as the insurance sole loss payee and (iii) give us written proof of the insurance. If you do not provide such insurance, we have the right, without obligation, to obtain such insurance and add an insurance fee (which may include a profit) to the amount due from you. You will obtain and maintain comprehensive public liability insurance naming us as an additional insured with coverages and amounts acceptable to us. To the extent not expressly prohibited by applicable law, you will reimburse and defend us, including each Assignee for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by us, including any Assignee, relating to the Equipment and which relate to or arise out of your act or omission or the act or omission of your agents or employees or others (excluding us) with access to the Equipment. The terms of this paragraph will continue after the termination, cancellation or expiration of this Agreement.

**6. Taxes:** You agree to pay when due, either directly or as reimbursement to us, all taxes (i.e., sales, use and personal property) and charges in connection with ownership and use of the Equipment. We may charge you a processing fee for administering property tax filings. To the extent not expressly prohibited by applicable law, you will indemnify us on an after-tax basis, on demand, against the loss or unavailability of any of our anticipated equipment ownership tax benefits caused by your act or omission.

**7. Default remedies:** You are in default under this Agreement if: a) you fail to pay a Payment or any other amount when due; or b) you breach any other obligation under this Agreement or any other agreement with us; or c) your principal owner or any guarantor of this Agreement dies; d) you or any guarantor dissolves, ceases to do business as a going concern, becomes insolvent, bankrupt, merges, or is sold; or e) You or any guarantor fails to pay any other material obligation owed to us or any of our affiliates. Upon default, we may: a) declare the entire balance of unpaid Payments for the full Term immediately due and payable; b) sue you for and receive the total amount due plus the Equipment's anticipated end-of-Term fair market value ("FMV") or fixed price purchase option (the "Residual") Agreement #0110077950

## Short Form Lease Agreement No. 0110077950

with future Payments and Residual discounted to the date of default at the lesser of (i) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Term, all as reasonably determined by us; or (ii) 3% per annum, but only to the extent permitted by law; c) charge you interest on all monies due at the rate of 18% per year from the date of default until paid; and/or d) require you to immediately return the Equipment to us or we may peaceably repossess it. Upon default, you will also pay all expenses including but not limited to reasonable attorneys fees, legal costs, cost of storage and shipping incurred by us in the enforcement and attempted enforcement of any remedies under this Agreement. Any return or repossession will not be considered an Agreement termination or cancellation. If the Equipment is returned or repossessed we may sell or re-rent the Equipment at terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds (after deducting any related expenses) to your obligations. You remain liable for any deficiency with any excess being retained by us.

**8. End of term:** You will give us at least 90 days but not more than 180 days written notice (to our address above) before the initial Term (or any renewal term) expiration of your intention to purchase or return the Equipment, whereupon you may: a) purchase all, but not less than all, of the Equipment as indicated above or b) return all of the Equipment in good working condition at your cost how, when and where we direct. Any FMV purchase option amount will be determined by us based on the Equipment's in place value. If you don't notify us, or if you don't a) purchase or b) return the Equipment as provided herein, this Agreement will automatically renew at the same Payment amount for consecutive 60-day periods. If any Software license ("License") included hereunder passes title to you, such title shall automatically, and without further action, hereby vest in us, and you hereby agree to relinquish any subsequent Software title, purchase or use right claim. If, in connection with our Software rights, licensor's consent is required, you will assist us in obtaining such consent. If the \$1.00 Buyout is selected above, the first three sentences of this section 8 shall be void and upon expiration of the Term, you shall pay all amounts owed by you hereunder but unpaid as of such date plus \$1.00 (and any applicable taxes). Any purchase of the Equipment by you pursuant to a purchase option or \$1.00 Buyout shall be "AS IS, WHERE IS" without representation or warranty of any kind from us.

**9. Miscellaneous:** You acknowledge we have given you the Equipment supplier's name. We hereby notify you that you may have rights under the supplier's contract and may contact the supplier for a description of these rights. This Agreement shall be governed and construed in accordance with the laws of Michigan. You agree (i) to waive any and all rights and remedies granted to you under Uniform Commercial Code Sections 2A-508 through 2A-522, and (ii) that the Equipment will only be used for business purposes and not for personal, family or household use. This Agreement may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement by you and when manually countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. No security interest in this Agreement can be perfected by possession of any counterpart other than the counterpart bearing our original signature. You agree not to raise as a defense to the enforcement of this Agreement or any related documents hereto the fact that such documents were executed by electronic means. We may inspect the Equipment during the Term. No failure to act shall be deemed a waiver of any rights hereunder. If you fail to pay (within thirty days of invoice date) any freight, sales tax or other amounts related to the Equipment which are not financed hereunder and are billed directly by us to you, such amounts shall be added to the Payments set forth above (plus interest or additional charges thereon) and you authorize us to adjust such Payments accordingly. If you are required to report the components of your payment obligations hereunder to certain state and/or federal agencies or public health coverage programs such as Medicare, Medicaid, SCHIP or others, and such amounts are not adequately disclosed in any attachment hereto, then Stryker Sales Corporation will, upon your written request, provide you with a detailed outline of the components of your payments which may include equipment, software, service and other related components. You acknowledge that you have not received any tax or accounting advice from us. You agree that you shall upon request from us, promptly provide to us a copy of your most recent annual financial statements and any of your other financial information (including interim financial statements) that we may request. You authorize us to share such information with our affiliates, subsidiaries and Assignees. **This Agreement, any schedules hereto, any attachments to this Agreement or any schedules and any express warranties made by Stryker Sales Corporation constitute the entire agreement between the parties hereto regarding the Equipment and its use and possession and supersede all prior agreements and discussions regarding the Equipment and any prior course of conduct. You waive all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or this Agreement. There are no agreements, oral or written, between the parties which are contrary to the terms of this Agreement and such other documents. YOU AGREE THAT THIS IS A NON-CANCELLABLE AGREEMENT AND WAIVE TRIAL BY JURY.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**“OWNER”**

STRYKER SALES CORPORATION,  
a Michigan corporation

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of STRYKER SALES CORPORATION, a Michigan corporation authorized to do business in Florida on behalf of the corporation. He or she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

JES:jrm  
11/25/2019  
L:agr/fire/2020-311

## Exhibit A to Short Form Lease Agreement Number 0110077950

### Description of equipment

**Customer name:** Pompano Beach, City Of

**Delivery address:** 120 SW 3RD ST, POMPANO BEACH, Florida 33060-7900

**Part I - Equipment/Service Coverage (if applicable)**

Model number	Equipment description	Quantity
99577-001957	LIFEPAK 15 V4	9
11220-000028	Carry case top pouch for use w/LIFEPAK 12 or LIFEPAK 15	9
11260-000039	LIFEPAK 15 Carry case back pouch	9
21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	18
11140-000015	AC power cord	1
11141-000115	REDI-CHARGE Base (power cord not included)	1
11140-000052	LP15 REDI-CHARGE Adapter Tray	1
11171-000046	M-LNCS DCI,Adult Reusable Sensor1/box	9
11171-000049	Rainbow DCI Adt Reusable Sensor,1/box	9
11171-000082	RC-4,EMSRainbowPatient Cable4FT	9
21996-000109	Titan III WiFi Gateway	9

**Total equipment:** \$280,030.50

**Service coverage:**

Model number	Service coverage description	Quantity	Years
LP15-PCPVOS-3-POS-UP	LIFEPAK15 Service - 3 YEAR. On-site ProCare Prevent	1	3.0

**Total service coverage: \$41,310.00**

**Total Financed Amount:** \$321,340.50

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**“OWNER”**

STRYKER SALES CORPORATION,  
a Michigan corporation

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of STRYKER SALES CORPORATION, a Michigan corporation authorized to do business in Florida on behalf of the corporation. He or she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

JES:jrm  
11/25/2019  
L:agr/fire/2020-311



## **RIDER TO SHORT FORM LEASE AGREEMENT 0110077950**

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**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the **CITY OF POMPANO BEACH**, a Florida municipal corporation (“**Customer**”) and **STRYKER SALES CORPORATION**, a Michigan corporation authorized to do business in Florida (“**Owner**”), collectively referred to as “the Parties.”

**WHEREAS**, Customer currently possesses twenty-on (21) LifePak ECG monitors (lifesaving devices) that are used by the Customer’s Fire Department, and desires to participate in the Owner’s interest free Life Safety Device Purchase Program, which offers incentives for future equipment purchases; and

**WHEREAS**, the Parties desire to enter into a leasing relationship for acquisition of future Equipment needs, which the Owner is able and prepared to provide as Customer requires, under those terms and conditions set forth.

**NOW, THEREFORE**, in consideration of those mutual promises and the terms and conditions set forth, the parties agree as follows:

1. *Contract Documents.* The Contract Documents consist of this Rider and Short Form Lease Agreement No. 0110077950; and the manufacturer’s Warranty, Indemnification and Compliance Statement; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. . In the event of any conflict or inconsistency between this Rider and the provisions in the incorporated Contract Documents, resolution shall be attained by giving precedence in the following order: (i) this Rider, and (ii) Lease Agreement No. 0110077950.

2. *Purpose.* Financing of life saving equipment to Customer upon the terms of this agreement.

3. *Invoices.* Owner shall submit the invoices to Customer.

4. *Public Records.* Owner shall comply with all provisions of Florida Statutes Chapter 119. Specifically Owner shall: 1. Keep and maintain public records required by the Customer in order to perform the service; 2. Upon request from the Customer’s custodian of public records, provide the Customer with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Owner does not transfer the records to the Customer; and 4. Upon completion of the contract, transfer, at no cost to the Customer, all public records in possession of Owner, or keep and maintain

public records required by the Customer to perform the service. If Owner transfers all public records to the Customer upon completion of the contract, Owner shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Owner keeps and maintains public records upon completion of the contract, Owner shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records in a format that is compatible with the information technology systems of the Customer.

Failure to comply with said statutory requirements may subject Owner to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN IF OWNER HAS  
QUESTIONS REGARDING THE APPLICATION  
OF CHAPTER 119, FLORIDA STATUTES, TO  
OWNER'S DUTY TO PROVIDE PUBLIC  
RECORDS RELATING TO THIS CONTRACT,  
CONTACT THE CUSTODIAN OF PUBLIC  
RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611**

5. *Force Majeure.* Owner shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Owner. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

6. *Entire Agreement.* This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

7. *Confidentiality.* Upon receipt of any confidential information by City of Pompano Beach, said information becomes "a public record" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. If Owner wishes to claim an exemption to disclosure, they shall provide the specific statutory authority for the claimed exemption, identifying the data or other materials to be protected and stating the reasons why such exclusion from public disclosure is necessary. However, if a request is made of the City of Pompano Beach, pursuant to chapter 119, Florida Statute, for public disclosure of proprietary property of Owner, the City of

Pompano Beach shall advise Owner of such request and it shall be Owner's sole burden and responsibility to immediately seek and obtain such injunctive or other relief from the courts and to immediately serve notice of the same upon the party requesting the public records. The City of Pompano Beach shall, at all times, comply with the public records disclosure requirement of Chapter 119 Florida Statutes and shall not be subject to any liability for its compliance with Florida Statute Chapter 119.

8. *Sovereign Immunity.* Nothing in this Agreement shall constitute a waiver by the City of Pompano Beach of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

9. *Severability.* Should any provision of this Agreement or the applications of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of provisions of this Agreement shall remain in full force and effect.

10. The Customer promises and agrees with the Owner to employ and does employ the Owner to provide the materials to pay for the same according to the attached specifications and the schedule of unit or itemized prices attached, at the time and in the manner and upon the conditions provided for in this contract.

11. The Owner for itself and its successors and assigns, does agree to the full performance of all the covenants contained in the Contract Documents upon the part of the Owner.

12. It is further provided that no liability shall be attached to the Customer by reason of entering into this contract, except as expressly provided herein.

13. Customer represents and warrants to Owner that as of the date of, and throughout the Term of, this Agreement: (a) Customer is a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) the persons signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) the Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) the Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Owner that, as of the date each item of Equipment becomes subject to the Agreement and any applicable schedule, the Customer has funds available to pay all Agreement payments until the end of Customer's then current fiscal year, and, in this regard and upon Owner's request, Customer shall deliver in a form acceptable to Owner and enacted by Customer's governing body, authorization for the

appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.

14. To the extent permitted by applicable law, Customer agrees to take all necessary and timely action during the Agreement Term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Agreement (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to obtain applicable appropriations, causing approval of such budget, and exhausting all available reviews and appeals if an appropriation sufficient to satisfy the Obligations is not made.

15. Notwithstanding anything to the contrary provided in the Agreement, if Customer does not appropriate funds sufficient to make all payments due during any fiscal year under the Agreement and Customer does not otherwise have funds available to lawfully pay the Agreement payments (a "Non-Appropriation Event"), and provided Customer is not in default of any of Customer's obligations under such Agreement as of the effective date of such termination, Customer may terminate such Agreement effective as of the end of Customer's last funded fiscal year ("Termination Date") without liability for future monthly charges or the early termination charge under such Agreement, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Owner.

16. If Customer terminates the Agreement prior to the expiration of the end of the Agreement's initial (primary) term, or any extension or renewal, as permitted under Section 15 above, Customer shall (i) on or before the Termination Date, at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States and all Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Owner, upon request by Owner, an opinion of Customer's counsel (addressed to Owner) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Owner all sums payable to Owner under the Agreement up to and including the Termination Date.

17. Upgrade of Equipment. The Customer may upgrade the Equipment within the same product class and with like technology, upon Owner's offering such upgraded Equipment for general sale, under terms and conditions as mutually agreed upon at the time of upgrade, including the interest rate applicable to the upgrade transaction, amount financed, payment, term and tax rates. In the event the Customer elects to upgrade the Equipment as provided, the Customer shall give Owner 30 days' prior written notice. Any Equipment upgrade is subject to the credit approval at that time and subject to the execution of mutually acceptable documentation; it being agreed to and understood that this option will not change Obligations under the Agreement, unless and until new mutually acceptable documentation is executed.

18. Customer shall provide insurance coverage, where required, including, but not limited to, fire, extended coverage, vandalism and theft, and shall cover Owner or its agent or assignee as additional insured and Lender's loss payee with regard to all equipment financed or

acquired for use under Contract Documents. The Customer shall provide a certificate consistent with this provision to the Owner.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**“OWNER”**

STRYKER SALES CORPORATION,  
a Michigan corporation

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Print or Type Name)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of STRYKER SALES CORPORATION, a Michigan corporation authorized to do business in Florida on behalf of the corporation. He or she is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY’S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

JES:jrm  
11/25/2019  
L:agr/fire/2020-311

WARRANTY, INDEMNIFICATION  
AND COMPLIANCE STATEMENT  
(Physio-Control)

PHYSIO-CONTROL WARRANTY:

Products manufactured and sold by Physio-Control, Inc. include the warranties set forth in Schedule I attached to this Statement and incorporated herein by reference.

EXCEPT AS OTHERWISE SET FORTH IN THIS STATEMENT, PHYSIO-CONTROL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

INDEMNIFICATION:

This indemnification is in effect for the Equipment and Disposables provided the instructions outlined in the Manufacturer's Operating Instructions (separately provided to you) are followed. Physio-Control will hold you harmless and will indemnify you for any and all liability arising directly from personal injuries to patients which occur during the use of the Equipment or Disposables on such patients and which are directly caused, and to the extent such injury is directly caused, by a design or manufacturing defect of the Equipment or Disposables. This indemnification will not apply to any liability arising from (A) a patient injury due to the negligence of any person other than an employee or agent of Physio-Control during such use, (B) the failure of any person other than an employee or agent of Physio-Control to follow any instructions for use of the Equipment and Disposables or (C) the use of any equipment or disposables not purchased from Physio-Control or Equipment or Disposables that have been modified or altered. You will hold Physio-Control harmless and will indemnify Physio-Control for any and all liability incurred from patient injury resulting directly from the negligence of any of your employees, your failure to follow Physio-Control's instructions for the Equipment and Disposables, and any modifications or alterations to the Equipment or Disposables by you.

INSURANCE:

Physio-Control shall maintain, at its own expense, insurance policies of the kind and limits listed below and with insurers with an A.M. Best rating of not less than A- VIII or its equivalent:

- (a) WORKERS' COMPENSATION with statutory limits and EMPLOYER'S LIABILITY with minimum limits of \$2,000,000 Each Accident, \$2,000,000 Disease – Each Employee, and \$2,000,000 Disease – Policy Limit.
- (b) COMMERCIAL GENERAL LIABILITY, including Premises/Operations Liability, Products/Completed Operations Liability, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage Liability, and Personal/Advertising Injury Liability, with minimum limits of \$3,000,000 per occurrence and \$3,000,000 general aggregate.
- (c) AUTOMOBILE LIABILITY covering owned, non-owned and hired autos with a minimum combined single limit of \$2,000,000 per accident if licensed vehicles are used in connection with the performance of this Agreement, and at all times when such vehicles are operated on the leased or owned premises of Hospital.

At your request, Physio-Control shall provide you with a certificate of insurance evidencing the foregoing insurance. Physio-Control warrants that it will maintain the above insurance coverages during the term of your purchases of products from Physio-Control and you will be provided with at least thirty (30) days' prior written notice of cancellation of any coverage, unless cancellation is due to the non-payment of premium, in which case Physio-Control shall provide ten (10) days' prior written notice. With the exception of policy (c) above, Physio-Control shall be permitted to maintain any of the required insurance coverages through a program of self-insurance.

COMPLIANCE:

1. FDA. To the extent required, Physio-Control represents and warrants that the U.S. Food and Drug Administration ("FDA") has cleared the products provided to you for the uses specifically set forth in the instructions for use accompanying the products. Physio-Control represents and warrants that no product delivered to you by Physio-Control is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law in which the definition of adulteration and misbranding are substantially the same as those contained in the Federal Food, Drug and Cosmetic Act, as said Act and such laws are constituted and effective at the time of shipment or delivery, or is a product which may not, under the provisions of Section 404 or 505 of said Act, be introduced into interstate commerce.

2. Physio-Control Personnel. To the extent provided to you, Physio-Control represents and warrants that all services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further Physio-Control represents and warrants that services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes for which they are provided. Physio-Control only agrees to acknowledge your policies and that Physio-Control is encouraged by you to report violations of your policies. You may only exclude Physio-Control's employees, agents, or independent contractors from dealings between the parties for violations of your policies, provided, however, that Physio-Control's agents and independent contractors are not subject to your approval.



3. Non-Exclusion. Physio-Control represents and warrants that, as of the date this Statement is provided to you, neither it nor, to the best of its knowledge, any of its employees or agents engaged to provide products or services to you, are or have been excluded, terminated, suspended, or debarred from participation in federal or state health care programs or federal or state government contracts pursuant to §1128 of the Social Security Act, 42 U.S.C. §1320a-7 or 48 C.F.R. Part 9, or related regulations or other federal or state laws and regulations (each an "Exclusion or Debarment Event"). During the term of your purchase of products and/or services from Physio-Control, it shall promptly notify you in the event it becomes subject to an Exclusion or Debarment Event. You retain the right, as your sole and exclusive remedy, to terminate any services agreements with Physio-Control and/or purchases of undelivered products from Physio-Control in the event Physio-Control becomes subject to an Exclusion or Debarment Event.

4. HIPAA Compliance. Physio-Control and you understand, acknowledge and agree that although not necessary to Physio-Control's providing goods and/or services to you, Physio-Control's employees, contractors, agents or other representatives may encounter personal or confidential information or materials belonging to you, your patients, employees, contractors, agents or other representatives. All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients) shall be treated by both parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. The parties shall to the extent applicable, comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the regulations thereunder as amended to ensure the protection of Protected Health Information ("PHI") as defined therein.

5. Applicable Laws. It is the intent of Physio-Control and you to comply in all respects with all federal, state and local laws and regulations governing the relationship between or among healthcare providers. In the event performance by either party should jeopardize your full accreditation or licensure by any regulatory agency, or be in violation of any statute or ordinance or for any reason be illegal or deemed unethical by any recognized agency or association in the medical or hospital fields, you may, at your option, terminate your purchases of products from Physio-Control.

6. Access to Records. To the extent required by law the following provision applies: Physio-Control agrees to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). To the extent applicable to its activities, Physio-Control further specifically agrees that until the expiration of four (4) years after furnishing services and/or products pursuant to this Agreement, Physio-Control shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Statement and the books, documents and records of Physio-Control that are necessary to verify the nature and extent of the costs charged to you for purchases of products from Physio-Control. Physio-Control further agrees that if Physio-Control carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

#### CONFIDENTIALITY:

You will not disclose to any third party the terms, including pricing information, or any other information provided by Physio-Control to you in connection with the sale of products to you by Physio-Control, without Physio-Control's prior written approval. The confidentiality obligation will not apply to information that is: (a) already public or that becomes public other than as a result of disclosure by you; or (b) required by law or legal process to be disclosed. In the case of required disclosure, written notice of such requirement will be promptly communicated to Physio-Control and you will cooperate, at the expense of Physio-Control, with Physio-Control in its efforts to limit the scope of disclosure required.

#### NO EFFECT ON FINANCE AGREEMENTS:

The warranty, indemnification, insurance, compliance and other terms of this Statement are the responsibility of Physio-Control and its provisions including that of warranty and indemnification shall apply to any equipment leased from Physio-Control and/or Stryker Sales Corporation, but: (i) the terms of this Statement shall not be a part of, nor affect in any manner, any agreement(s) between you and Stryker Flex Financial, a division of Stryker Sales Corporation (collectively "Stryker Finance Agreement"); and (ii) no assignee of any Stryker Finance Agreement shall have any responsibility to you under this Statement.

**Product Warranty and Return Policy**

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## LIMITED WARRANTY

Subject to the limitations and exclusions set forth below, the following Physio-Control products which are purchased from authorized Physio-Control representatives or authorized resellers for use in the United States of America, Canada, Latin America and South America and are used in accordance with their instructions, will be free from defects in material and workmanship appearing under normal service and use as defined below.

### Eight Years:

- New LIFEPAK CR® Plus automated external defibrillator and internal battery system

### Five Years:

- New LIFEPAK® 15 monitor/defibrillator series, used in clinic and hospital settings exclusively (with no use in mobile applications)
- New LIFEPAK 12 defibrillator/monitor series, used in clinic and hospital settings exclusively (with no use in mobile applications)
- New LIFEPAK 20 defibrillator/monitor family of products, used in clinics and hospital settings exclusively (with no use in mobile applications)
- New LIFEPAK 1000 defibrillators
- New LIFEPAK EXPRESS® automated external defibrillator and internal battery system

### Two Years:

- New Trainer 1000 trainer
- CodeManagement Module™ for use with the LIFEPAK 20/20e defibrillator/monitor

### One Year:

- New LIFEPAK 15 monitor/defibrillator series, which include use in out-of-hospital and mobile applications
- New LIFEPAK 12 defibrillator/monitor series, which include use in out-of-hospital and mobile applications
- RELI™ LIFEPAK 12 defibrillator/monitor series
- New LUCAS® Chest Compression System
- New LIFEPAK 500T trainer
- New LIFEPAK CR-T trainer
- Internal Battery System for LIFEPAK 20 defibrillator/monitor family of products
- Battery charging systems and power adapters
- All batteries and battery paks, excluding CHARGE-PAK™ Charging Unit
- Masimo SET® Rainbow® patient cables and reusable sensors
- New TrueCPR™ Coaching Device

### 180 Days:

- Masimo® SET SpO<sub>2</sub> only patient cables and reusable sensors

### 90 Days:

- CHARGE-PAK Charging Unit (external system) for LIFEPAK CR Plus defibrillator
- Installed customer repair parts
- All other product accessories

### 30 Days:

- Internal paddles and internal paddle handles

Limited warranty time limits begin on the date of delivery to the First Owner.<sup>1</sup>

Physio-Control warrants neither error-free nor interruption-free performance. The sole and exclusive remedy the First Owner under this Limited Warranty is repair or replacement of defective material or workmanship at the option of Physio-Control. To qualify for the repair or replacement, the product must have been continuously owned by the First Owner and not have been repaired or altered outside of an authorized Physio-Control factory in any way which, in the judgment of Physio-Control, affects its stability and reliability. The product must have been used in accordance with applicable operating instructions and in the intended environment or setting. The product must not have been subjected to misuse, abuse or accident.

Physio-Control, in its sole discretion, will determine whether warranty service on the product will be performed in the field or through ship-in repair. For field repair, this warranty service will be provided by Physio-Control at the purchaser's facility or an authorized Physio-Control facility during normal business hours. For ship-in repair, all products and/or assemblies requiring warranty service should be returned to a location designated by Physio-Control, freight prepaid, and must be accompanied by a written, detailed explanation of the claimed failure. Products repaired or replaced under this warranty retain the remainder of the warranty period of the repaired or replaced Product.

Except for the Limited Warranty provided above, **PHYSIO-CONTROL MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOMER OR OTHERWISE.** THIS LIMITED WARRANTY SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON. PHYSIO-CONTROL IS NOT LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS OR PROFITS) WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

ANY LEGAL ACTION ARISING FROM THE PURCHASE OR USE OF PHYSIO-CONTROL PRODUCTS SHALL BE COMMENCED WITHIN ONE YEAR FROM THE ACCRUAL OF THE CAUSE OF ACTION, OR BE BARRED FOREVER. IN NO EVENT SHALL PHYSIO-CONTROL'S LIABILITY UNDER THIS WARRANTY OR OTHERWISE EXCEED THE GREATER OF \$50,000 OR THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE CAUSE OF ACTION.

Products are warranted in conformance with applicable laws. If any part or term of this Limited Warranty is held to be illegal, unenforceable or in conflict with applicable law by any court of competent jurisdiction, the validity of the remaining portions of the Limited Warranty shall not be affected, and all rights and obligations shall be construed and enforced as if this Limited Warranty did not contain the particular part or term held to be invalid. Some geographies, including certain US states, do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This Limited Warranty gives the user specific legal rights. The user may also have other rights which vary from state to state or country to country.

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<sup>1</sup> First Owner means the first purchaser or lessee of the products listed above, directly from Physio-Control, through a Physio-Control corporate affiliate, or from an authorized Physio-Control reseller, and includes the invoiced purchaser's corporate affiliates, and their respective employees, officers and directors.