

LOS ANGELES FIRE COMMISSION

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FIRE COMMISSIONERS

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INDEPENDENT ASSESSOR

EXECUTIVE OFFICE
200 NORTH MAIN STREET, SUITE 1840
LOS ANGELES, CA 90012

(213) 978-3838 PHONE
(213) 978-3814 FAX

September 7, 2016

Honorable Members of the City Council
City of Los Angeles
City Hall, Room 395
Attn: City Clerk

Honorable Eric Garcetti
Mayor, City of Los Angeles
City Hall, Room 303
Attn: Mandy Morales, Legislative Coordinator

[BFC 16-085] – RESTATEMENT AND SECOND AMENDMENT OF AGREEMENT
C-117907 BETWEEN THE LOS ANGELES FIRE DEPARTMENT AND PHYSIO-CONTROL,
INC.

At its meeting of September 6, 2016, the Board of Fire Commissioners approved the report. Due to expressed concerns with existing performance by the vendor under the current Restatement and Second Amendment of Agreement C-117907 be amended to (1) reflect a shorter term (18 months) and (2) include a provision governing performance penalties. The report is hereby transmitted concurrently to the Mayor and City Council for consideration and approval.

Should you need additional information, please contact the Board of Fire Commissioners' office at 213-978-3838.

Sincerely,

Sandra Gonzalez
Acting Commission Executive Assistant

Attachment

cc: Board of Fire Commissioners
Fire Chief Ralph M. Terrazas

LOS ANGELES FIRE DEPARTMENT



RALPH M. TERRAZAS
FIRE CHIEF

APPROVED: 9/6/16
BOARD OF FIRE COMMISSIONERS
BY *Stephanie Martinez* 9/6/16
COMMISSION EXECUTIVE ASSISTANT

June 20, 2016

BOARD OF FIRE COMMISSIONERS
FILE NO. 16-085

TO: Board of Fire Commissioners

FROM: Ralph M. Terrazas, Fire Chief

SUBJECT: RESTATEMENT AND SECOND AMENDMENT OF AGREEMENT
C-117907 BETWEEN THE LOS ANGELES FIRE DEPARTMENT
AND PHYSIO-CONTROL, INC.

FINAL ACTION: Approved Approved w/Corrections Withdrawn
 Denied Received & Filed Other

SUMMARY

The Los Angeles Fire Department (LAFD) entered into an Agreement (C-117907) with Scan Health, Inc., dba Sansio on September 24, 2010 to provide field data capture devices designed to automate the collection of emergency medical services patient data.

The First Amendment to the Agreement was executed on January 29, 2016 to reflect that Physio-Control, Inc. acquired Sansio along with all its contractual obligations, pursuant to Section 7- Assignment.

The Agreement, which expires September 24, 2016, provides for six (6) additional three-year renewal options. The LAFD has had tremendous success transitioning paper-based patient care records to an electronic format with the assistance of Physio-Control, Inc.'s products and services. The LAFD, therefore, desires to continue the Agreement for an additional three-year period at an estimated total cost of \$6.5 million, subject to selection of the new data collection devices.

RECOMMENDATION(S)

That the Board:

Approve the report and transmit the Second Amendment to the Agreement with Physio-Control, Inc. to the Mayor and City Council for consideration and approval.

FISCAL IMPACT

The proposed Second Amendment to Agreement C-117907 is projected to cost the LAFD from \$6.0 to \$6.5 million over the term of September 24, 2016 through September

23, 2019. The final cost breakdown for the LAFD is dependent on the final availability and selection of replacement tablets for field resources. The estimated cost breakdown is approximately \$2.5 million in FY2017, \$2.0 million in FY2018, and \$2.0 million in FY2019, with a small balance amount due in the first quarter of FY2020.

Board report prepared by William Jones, Senior Management Analyst II, of the Administrative Services Bureau.

Attachment

**SECOND AMENDMENT TO AGREEMENT NUMBER C-117907
BETWEEN
THE CITY OF LOS ANGELES
AND
PHYSIO-CONTROL
FOR FIELD DATA COLLECTION SYSTEM (FDCS)**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Los Angeles, California, a municipal corporation (hereinafter referred to as the "CITY") by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and Physio-Control, Inc..

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 ScanHealth, Inc. (dba Sansio) proposal satisfied the CITY's requirements for mobile field data capture devices and the software and program support 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 the Sansio's staff was required to install, maintain and service its Licensed Software; and

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

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

WHEREAS, CONTRACTOR's 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 protected health information 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 CONTRACTOR to license field data capture software and lease emergency medical service mobile field data capture equipment; and

WHEREAS, the CITY in the First Amendment to Agreement C-117907 (C-117907-1) agreed to the Assignment of the Agreement to Physio-Control, Inc. as the CONTRACTOR on December 9, 2015; and

WHEREAS, the CITY and CONTRACTOR desire to execute this Second Amendment and Restatement, and First Renewal Option, of Agreement No. C-117907 (C-117907-2) to increase the ceiling amount from \$9,961,960 to \$15,761,940, extend the term to September 24, 2019, restate the continuing terms and incorporate additional amendments; 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. "ADPI"), the Hospital Association of Southern California ("HASC") 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 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 11811 Willows Road NE, Redmond, WA 98052 with its Data Solutions team (performing staff) located at 11East Superior Street, Suite 310, Duluth, MN 55802.

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 representative is, unless otherwise stated in the Agreement:

Ralph M. Terrazas, Fire Chief

Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
(213) 978-3838
(213) 978-3814 fax
ralph.terrazas@lacity.org

And:

June Gibson, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, California 90012
(213) 978-3731
(213) 978-3414 fax
june.gibson@lacity.org

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

Dale A Pearson, GM (formerly Sansio)
Physio-Control, Inc.
11 East Superior Street, Suite 310
Duluth, MN 55802
(218) 625-7226 Ext. 7217
(2183 625-7225 fax

Legal Counsel Physio-Control, Inc.
11811 Willows Road
P.O. Box 97006
Redmond, WA 98052
(800) 442-1142
(425) 867-4227 fax

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 LAFD in the quantities and at the rates provided in Exhibit C, as amended and included herein. CONTRACTOR shall provide all new Hardware and all necessary software, of greater or equal functionality as approved by LAFD, at the conclusion of the sixth (6th) year of this Agreement. CONTRACTOR shall provide the replacement Hardware and Licensed Software burn in services, in accordance with Exhibit C.

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.

CONTRACTOR shall retain ownership of the Hardware during the initial 3 year term (Hardware Performance Period) the devices are in service. At the conclusion of the Hardware Performance Period of this Agreement, the LAFD agrees to accept ownership of the field data capture devices from the CONTRACTOR at no additional cost to the CITY. The CITY agrees to accept all the devices "AS-IS", with no expressed warranty considered or offered by the CONTRACTOR.

3.0 TERM OF AGREEMENT

The term of this Agreement commenced on September 24, 2010 and shall remain in full force and effect for a nine (9) year period from that date, unless terminated earlier as provided herein. The City, at its sole discretion, may exercise five (5) additional options to extend the term of this agreement in three (3) year increments.

4.0 PROCEDURES MANUAL

The Parties shall develop and maintain 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 of this Agreement. The Parties agree to review and consider updates to the procedure manual on a quarterly basis. If updates are required and not provided by the CONTRACTOR, then the CITY may delay payments to CONTRACTOR until such updates are provided.

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, GA, 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 compiled programs with installation instructions and Hardware requirements with the escrow agent, as updated from time to time, but at a minimum every six months.

6.0 SERVICES TO BE PROVIDED

6.1 Transition

CONTRACTOR and LAFD agree that they shall fully cooperate with each other in transitioning from the LAFD's current manual EMS field data capture system to the CONTRACTOR's System.

6.2 Project Plan

Within fifteen (15) days of the effective date of this Agreement, CONTRACTOR must conduct a planning meeting with the CITY's Project Manager and present a draft Project Plan for evaluation. Within 15 days of the planning meeting, CONTRACTOR must deliver a Project Plan, acceptable to the LAFD, which shall include a timeline, goals, objectives and tasks to be completed during the transition period. The Parties shall notify each other immediately upon discovering that revisions to the Project Plan are necessary.

6.3 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 Central Time, excluding CONTRACTOR's holidays. After hours or "non-prime" hours include 6PM - 7AM Central Time Monday - Thursday; 5PM Central Time on Friday through 7AM Central 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 one consultant 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. In addition to the support provided through the Solution Center, CONTRACTOR shall provide one part-time consultant at a designated location of CONTRACTOR's choice, from the "All Stations Live Date" through the term of this Agreement, unless otherwise agreed by the Parties.

- d. CONTRACTOR shall respond to 95% of 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.
- e. 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.

6.4 Integration

- a. CONTRACTOR shall integrate its Licensed Software with 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 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 LAFD's Electrocardiogram ("EKG") defibrillator data in near real-time. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and 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 LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- d. CONTRACTOR shall integrate its emergency room module with the Hospital Association of Southern California's ReddiNet system, 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 LAFD. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and LAFD and shall be reflected in the Procedures Manual. Such integration shall conform to CITY specifications.
- e. Integration shall be complete when CONTRACTOR ensures that the CONTRACTOR's Licensed Software is fully compatible with CITY Systems, and data may be transferred from CITY Systems to CONTRACTOR's Systems, and back. CONTRACTOR agrees to provide system integration services, at no additional fee, for access to or interface with any CITY Systems. The CITY will provide any required third-party software licenses, software development kits (SDKs), application program interface (API) fees, or access fees.

6.5 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 LAFD's use at no charge to 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 24 hours a day, 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 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 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 LAFD's account has an undisputed past due balance or LAFD is otherwise in breach of this Agreement. The System Access Unavailable Credit will be calculated according to the following schedule:

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 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.
- d. **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. LAFD may audit the data backed up as well as the disaster recovery and business restoration plan annually.

6.6 Training

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

6.7 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.

6.8 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.

6.9 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 provide customized reporting capability, as provided in the Procedures Manual.

6.10 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.

6.11 Licenses and Property Rights

a. License

CONTRACTOR hereby grants to 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

- i. 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 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 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.
- ii. Unauthorized Acts. 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 LAFD under this Agreement, by any person or organization not authorized by this Agreement to have such possession, use or knowledge. 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. 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 LAFD for its negligent or intentional harm to CONTRACTOR's proprietary rights, or for breach of contractual rights.

- iii. Remedies. If 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. LAFD acknowledges that remedies at law may be inadequate.

6.12 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 LAFD advising CONTRACTOR in writing of such errors. CONTRACTOR shall not be responsible for maintaining LAFD-modified portions of the Licensed Software. Corrections for difficulties or defects traceable to LAFD errors or System changes will be billed at standard CONTRACTOR's 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 conclusion of the sixth (6th) year of this Agreement is also included in the Exhibit C, included herein this Second 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 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 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 nine (9) year term 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-20 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 30 days of approval of a complete invoice. CONTRACTOR shall resolve any disputed amounts within 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:
 - i. Date of invoice
 - ii. Invoice number
 - iii. Agreement number
 - iv. Description of services
 - v. 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.
- 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 10 business days following their start date to bring the replacement up to speed. In addition, LAFD reserves the right to require a replacement of employees whom 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 this Section 10, 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 LAFD, shall, as soon as practical, contact LAFD to inform LAFD of the inquiry, and shall comply with the procedures of 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 \$500,000; and

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

- a. General Liability and Automobile Liability Coverage
 - i. 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 LAFD, its officers, officials, employees or volunteers.

- ii. CONTRACTOR's insurance coverage shall be primary insurance as respects LAFD, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by 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 LAFD.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to LAFD, its officers, officials, employees or volunteers.
 - iv. 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.
 - v. Companies issuing the insurance policy, or policies, shall have no recourse against LAFD for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of CONTRACTOR.
- b. All Coverage
- i. 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 LAFD.
 - ii. CONTRACTOR shall furnish 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 LAFD before work commences. LAFD reserves the right to require complete, certified copies of all required insurance policies at any time.
 - iii. 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. 03/09), 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 FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

- a. CONTRACTOR/CONSULTANT shall, prior to the execution of the contract, provide to the DAA a list of anticipated employment opportunities that CONTRACTOR/CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- b. CONTRACTOR/CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR/CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR/CONSULTANT interviewed and the reasons why referred individuals were not hired.
- c. Any Subcontract entered into by the CONTRACTOR/CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
- d. CONTRACTOR/CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONTRACTOR/CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the designated administrative agency determines that the subject CONTRACTOR/CONSULTANT has violated provisions of the FSHO.

14.0 CALIFORNIA IRAN CONTRACTING

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC §2201(q)). The Iran Contracting Act prohibits

bidders engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A bidder who “engages in investment activities in Iran” is defined as either:

1. A bidder providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. A bidder that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The bidder shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the bidder is not identified on the DGS list of ineligible businesses or persons and that the bidder is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the bidder shall provide its vendor or financial institution name, and City Business Tax Registration Certificate (BRTC) if available, in completing ONE of the options shown in Exhibit D.

15.0 CHARTER SECTION 470

15.1 CEC FORM 50

Certain contractors agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if those contractors qualify as a lobbying entity under Los Angeles Municipal Code §48.02. CEC Form 50 attached. Agreements submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 shall be deemed nonresponsive.

Campaign Contributions – Per City Charter Sections 470(c) (12) the CONTRACTOR is subject to Charter section 470(c) (12) and related ordinances. As a result, the CONTRACTOR may not make campaign contributions to and/or engage in fundraising for certain elected City officials or candidates during the proposal process or for 12 months after the contract is signed. The CONTRACTOR’S principals and subcontractors performing \$100,000.00 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

15.2 CEC FORM 55

CEC Form 55 requires the CONTRACTOR to identify with their principals, their subcontractors performing \$100,000 or more in work on the Agreement, and the principals of those subcontractors. The CONTRACTOR must also notify their principals and subcontractors in writing of the restrictions and include the notice in Agreements with subcontractors. CEC Form 55 is attached. Agreements submitted without a completed CEC Form 55 shall be considered nonresponsive. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org

16.0 TABLE OF EXHIBITS

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

Exhibit A - Standard Provisions for City Contracts rev 03/09

Exhibit B - Reports (as Executed on 9/24/2010)

Exhibit C - Fee Schedule (revised 06/23/2016)

Exhibit D - Business Associate Agreement (effective 01/25/2013)

Exhibit E - Confidentiality Agreement (revised 04/28/2016)

Exhibit F - Staff Assignment Table (revised 12/29/2015)

Exhibit G - Source Code Escrow Agreement (as Executed on 9/24/2010)

The above referenced exhibits are incorporated herein by reference and incorporated as though fully stated.

[Signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this First (1st) Amendment to Agreement C-118005 to be executed by their duly authorized representatives:

THE CITY OF LOS ANGELES

By _____
RALPH M. TERRAZAS
Fire Chief

Date _____

PHYSIO-CONTROL, INC.,

By _____

Date _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By _____
Laurel L. Lightner
Assistant City Attorney

Date _____

ATTEST:

HOLLY L. WOLCOTT

By _____
Deputy City Clerk

Date _____