

ZOLL ONE PROGRAM MASTER AGREEMENT

This ZOLL ONE PROGRAM MASTER AGREEMENT, including all attachments attached hereto and hereby made a part hereof ("Master Agreement"), is entered into by and between ZOLL Medical Corporation, a Massachusetts corporation with its principal place of business at 269 Mill Road, Chelmsford, MA 01824 ("Lessor"), and the City of Chula Vista on behalf of the Chula Vista Fire Department, located at 276 Fourth Street, Building C, Suite 143, Chula Vista, CA 91910 ("Lessee"). This agreement will be effective upon the date of last signature ("Effective Date").

1. MASTER AGREEMENT; SCHEDULES. Lessor hereby leases to Lessee and Lessee leases from Lessor the equipment ("Equipment") described in any Equipment Schedule executed from time to time by Lessor and Lessee, the form of which is attached as Exhibit A hereto (the "Schedule" or "Schedules"), upon the terms and conditions set forth in this Master Agreement and the Schedules. In addition to leasing the Equipment, if RescueNet® CaseReview is included in the applicable quote, then Lessor will also provide Lessee with RescueNet® CaseReview pursuant to the terms and conditions of the ALS/BLS Software Solutions Master Application Service Provider Agreement attached as Exhibit B hereto (the "ASP Agreement"), otherwise the ASP Agreement in Exhibit B does not apply to this Agreement. In the event of any conflict between the terms and conditions contained in this Master Agreement and the terms and conditions contained in the ASP Agreement, the terms and conditions in Exhibit B shall control.

2. TERM. The initial term of this Master Agreement shall be ten (10) years ("Term") commencing and concurred as set forth by the Rental Term (defined hereinafter) for the first Schedule that applies to this Master Agreement.

3. RENT; LATE CHARGES. As rent for the Equipment, Lessee agrees to pay the amounts specified in the applicable Schedule on the due dates specified therein ("Rent").

4. NON-CANCELABLE; WAIVER OF DEFENSES TO PAYMENT. Lessee agrees that it has an absolute and unconditional obligation to pay all Rent and other amounts when due, unless disputed in good faith. Otherwise, Lessee is not entitled to abate, reduce or recoup Rent or any other amount due, or to set off any charge against any such amount for any reason whatsoever. Unless disputed in good faith, Lessee hereby waives any recoupment, crossclaim, counterclaim, or any other defense at law or in equity to any Rent payment or other amount due with respect to any Schedule, whether any such defense arises out of this Master Agreement. There is no "test period" for Equipment that would delay acceptance or the commencement of any Schedule term.

5. EQUIPMENT RETURN REQUIREMENTS. Upon expiration or earlier termination of this Master Agreement or an applicable Schedule, Lessee shall either (a) return the Equipment in accordance with this Section or (b) purchase the Equipment at the Fair Market Value as set forth in Section 8, in which case right, title and interest shall transfer to Lessee upon payment. In the event Lessee elects to return the Equipment to Lessor, such return must be made within sixty (60) days of the end of the applicable Rental Term or promptly upon Lessee receiving replacement Equipment, whichever occurs first. If Lessee fails to return Equipment to Lessor under the terms set forth in this section, then Lessee shall pay the monthly fees until the Equipment is received by Lessor. For all Equipment returned to Lessor, Lessee shall (a) remove any Lessee labels, tags or other non-factory markings on the Equipment and wipe clean or permanently delete all data contained on the Equipment, including, any data contained on internal or external drives, discs, or accompanying media, (b) pack the Equipment in accordance with the Lessor's guidelines, and (c) deliver such Equipment to Lessor at any destination within the continental United States designated by Lessor. All dismantling, packaging, transportation, in-transit insurance and shipping charges shall be borne by Lessee, unless Equipment is returned due to defects. All Equipment shall be returned to Lessor in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted. The return of the Equipment shall constitute a full release by Lessee of any leasehold rights or possessory interest in the Equipment.

6. EQUIPMENT USE; MAINTENANCE AND ADDITIONS. Lessee shall, at all times during the applicable Rental Term (a) operate and maintain the Equipment in good working order, repair and condition, and in accordance with the manufacturer's specifications and recommendations and, all applicable laws and regulations, and (b) purchase and use only accessories provided by Lessor for use with the Equipment. The ZOLL Worry-Free Service Plan described in Exhibit C is included in Rent. In the event of any conflict between the terms and conditions contained in this Master Agreement and the terms and conditions contained in Exhibit C (Worry-Free Service Plan), the terms and conditions in Exhibit C shall control. Lessee shall make no alterations or additions to the Equipment, except those that will not result in the creation of any security interest, lien or encumbrance on the Equipment or impair the value or use of the Equipment either at the time made or at the end of the Rental Term of the applicable Schedule, and that are readily removable without damage to the Equipment. Any such alterations or additions may void the Worry-Free Service Plan. Additionally, Lessor shall not be responsible for any Equipment defect or failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to (i) any modification of the Equipment by the Lessee without prior written approval of Lessor; (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified or expressly authorized by Lessor; (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by Lessor; or (v) installation or wiring of the Equipment other than in accordance with Lessor's instructions. EXCEPT FOR THE WARRANTY SET FORTH IN LESSOR'S STANDARD PRODUCT WARRANTY, WITH RESPECT TO THE EQUIPMENT, IS EXCLUSIVE, AND LESSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT.

7. EQUIPMENT OWNERSHIP; LOCATION. Lessor is the sole owner of the Equipment and has sole title thereto. Lessee may not relocate any Equipment from the Equipment location specified in the applicable Schedule without the prior written consent of Lessor.

8. RISK OF LOSS AND INSURANCE. Lessee assumes any and all risk of loss or damage to the Equipment until such Equipment is returned to and received by Lessor in accordance with the terms and conditions of this Master Agreement. Lessee agrees to keep the Equipment insured at Lessee's expense against all risks of loss from any cause whatsoever, including, without limitation, loss by fire (including extended coverage), theft and damage, in an amount not less than the estimated total retail price that would be paid for such Equipment in an arm's length transaction ("Fair Market Value") as set forth in Exhibit E as of the actual date the Schedule expires or is terminated, as applicable ("Stipulated Loss Value") or (b) with respect to any other Equipment, the replacement value thereof. Lessee also agrees that it shall carry commercial general liability insurance in an amount not less than \$5,000,000 total liability per occurrence. Lessee shall cause Lessor and its affiliates, and its and their successors and assigns, to be named loss payees with respect to property insurance and additional insureds with respect to commercial general liability insurance. Each policy shall provide that the insurance cannot be canceled without at least thirty (30) days' prior written notice to Lessor. In the event of loss or claim, Lessee will be responsible for all deductibles and/or retentions. All insurance required by this Master Agreement shall include a waiver of rights of recovery against Lessor and its insurers by the Lessee and its insurers, as well as a waiver of subrogation against Lessor and its insurers. All insurance required by this Master Agreement is primary and non-contributory to any other insurance maintained by Lessor. Lessee shall provide to Lessor (i) on or prior to the delivery date for each Schedule ("Delivery Date"), and from time to time thereafter throughout the Rental Term of each Schedule, certificates of insurance evidencing such insurance coverage, and (ii) upon Lessor's request, copies of the insurance policies. If Lessee fails to provide Lessor with such evidence, then Lessor will have the right, but not the obligation, to purchase such insurance protecting Lessor at Lessee's expense. Lessee's expense shall include the full premium paid for such insurance and any customary charges, costs or fees of Lessor, including but not limited to deductibles and retentions in the event of loss. Lessee agrees to pay such amounts in substantially equal installments allocated to each Rent payment.

9. CASUALTY LOSS. Lessee shall notify Lessor of any condemnation, taking, loss, destruction, theft or damage beyond repair of Equipment ("Casualty Loss") or repairable damage to any Equipment not later than thirty (30) days following the date of Lessee becoming aware of any such occurrence. In the event any Casualty Loss shall occur, on the next Rent payment date Lessee shall pay Lessor the Stipulated Loss Value of the Equipment suffering the Casualty Loss. In the event of any repairable damage to any Equipment, the Rental Term shall continue with respect to such Equipment without any abatement of Rent and Lessee shall at its expense cause such Equipment to be repaired to the condition it is required to be maintained in pursuant to Section 5 not later than thirty (30) days from the date of the occurrence.

10. INSPECTION. Lessor and Lessor's agents shall have the right, from time to time, with prior notice to Lessee, during Lessee's normal business hours, and without disruption to Lessee's operations, to enter the premises where the Equipment is located for the purpose of inspecting the Equipment at mutually agreeable date and time, subject to Lessee's security policies and procedures.

11. TAXES. Lessor shall report and pay all license and registration fees and all taxes, fees, levies, imposts, duties, assessments, charges and withholdings of any similar nature, however designated (including, any value added, transfer, sales, use, gross receipts, business, occupation, excise, personal property, real property, stamp or other taxes) ("Taxes") now or hereafter imposed or assessed by governmental body, agency or taxing authority upon the purchase, ownership, delivery, installation, leasing, rental, use or sale of the Equipment, the Rent or other charges payable hereunder, or otherwise upon or in connection with any Schedule, whether assessed on Lessor or Lessee, other than any such Taxes required by law to be reported and paid by Lessee ("Lessee Taxes"). Lessee shall within thirty(30) days of receipt of invoice reimburse Lessor for all such Lessee Taxes paid by Lessor, together with any penalties or interest in connection therewith attributable to Lessee's acts or failure to act, excluding: (a) Lessee Taxes on or measured by the overall gross or net income of Lessor, (b) as to any Schedule or the related Equipment, Lessee Taxes attributable to the period after the return of such Equipment to Lessor, and (c) Lessee Taxes imposed as a result of a sale or other transfer by Lessor of any portion of its interest in any Schedule or in any Equipment, except for a sale or other transfer to Lessee or a sale or other transfer occurring after and during the continuance of any Lessee Default.

12. GENERAL INDEMNITY. To the extent permitted by applicable law, each party shall indemnify, defend, and hold harmless the other party its employees, officers, directors, agents and assignees from and against any and all claims arising out of or in connection with this Agreement, including its own negligence and willful misconduct and its breach of this Master Agreement.

13. TAX BENEFIT INDEMNITY. Lessor and Lessee agree that Lessor is entitled to certain federal, state and local tax benefits available to an owner of Equipment (collectively, "Tax Benefits"). Lessee represents, warrants, and covenants to Lessor that (a) all Equipment will be used solely within the United States; and (b) Lessee will take no position inconsistent with the assumption that Lessor is the owner of the Equipment for federal, state, and local tax purposes. If, due to any act or omission of Lessee or any party acting through Lessee, or the breach or inaccuracy of any representation, warranty or covenant of Lessee contained the Master Agreement, Lessor reasonably determines that it cannot claim, is not allowed to claim, loses or must recapture any or all of the Tax Benefits otherwise available with respect to the Equipment subject to any Schedule (a "Tax Loss"), then Lessee shall, promptly upon demand pay to Lessor an amount sufficient to provide Lessor the same after-tax rate of return and aggregate after-tax cash flow through the end of the then-applicable Rental Term of such Schedule that Lessor would have realized but for such Tax Loss except where the Lessor would not be entitled to such Tax Benefits.

14. LIMITATION OF LIABILITY.

14.1 EACH PARTY EXPRESSLY AGREES THAT THE OTHER PARTY SHALL NOT BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER INCLUDING BUT NOT LIMITED TO DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF LESSEE'S MATERIAL, EQUIPMENT OR SYSTEMS, INCREASED COSTS OF ANY

KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, OR CLAIMS OF CUSTOMERS OF LESSEE. LESSEE EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE. THE PROVISIONS OF THIS SECTION SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS MASTER AGREEMENT.

14.2 EACH PARTY AGREES THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF A PARTY UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED TWO (2) TIMES THE ANNUAL FEE PAID TO LESSOR UNDER THIS MASTER AGREEMENT. THE PROVISIONS OF THIS SECTION SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS MASTER AGREEMENT. SUBJECT TO THE LIMITATIONS IN SECTION 14.1, THE LIMITATIONS SET FORTH IN THIS SECTION 14.2 SHALL NOT APPLY TO ANY PERSONAL INJURY CLAIMS TO THE EXTENT THEY ARE DIRECTLY CAUSED BY A DEFECT IN THE EQUIPMENT PROVIDED BY LESSOR UNDER THIS MASTER AGREEMENT OR IN PROPORTION TO AND TO THE EXTENT CAUSED BY LESSOR'S NEGLIGENCE OR WILLFUL MISCONDUCT. TOTAL AMOUNT PAID TO LESSOR UNDER THIS MASTER AGREEMENT. THE PROVISIONS OF THIS SECTION SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS MASTER AGREEMENT.

15. LESSEE REPRESENTATIONS AND COVENANTS. Lessee represents, warrants and covenants to Lessor that as of the date of this Master Agreement and for so long as this Master Agreement shall remain in effect: (a) all Equipment will be used by properly trained representatives of Lessee; (b) Lessee is duly organized and validly existing under applicable law in its jurisdiction of formation; (c) Lessee has the power and authority to enter into this Master Agreement; (d) the execution, delivery and performance of the Master Agreement by Lessee have been duly authorized; (e) the execution, delivery and performance of the Master Agreement by Lessee do not (1) conflict with any of Lessee's organizational documents, (2) contravene, conflict with, constitute a default under or violate any laws applicable to the Lessee, (3) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any governmental authority by which Lessee or any of its subsidiaries or any of their property or assets may be bound or affected or (4) require any action by, filing, registration, or qualification with, or governmental approval from, any governmental authority not already obtained or completed; (f) the Master Agreement is enforceable against Lessee in accordance with its terms and such terms do not violate or create a default under any instrument or agreement binding on Lessee; (g) as of the date of its execution of this Master Agreement and as of the Delivery Date of any Equipment, there are no pending or threatened actions or proceedings before any court, administrative agency or other governmental authority related to this Master Agreement or the power or authority of Lessee to enter into this Master Agreement; (h) Lessee shall comply with the requirements of all applicable laws and regulations in the performance of this Master Agreement; (i) Lessee's name set forth in the signature block below is Lessee's full and accurate legal name; and (j) Lessee's form and jurisdiction of organization, "location" (within the meaning of UCC Section 9-307), organization number and federal tax identification number are as set forth on Exhibit D hereto. Lessee agrees to provide Lessor advance written notice of any change in any of the representations and covenants set forth in clauses (g) through (l) of this Section 15.

16. FORCE MAJEURE. If the performance of any obligation under this Agreement by a party is prevented, restricted, or interfered with by reason of war, civil commotion, disruption in the supply chain, acts of public enemies, blockade, embargo, strikes, any law, order, proclamation, regulation, ordinance, demand, or requirement having a legal effect of any government or any judicial authority or representative of any such government, which is beyond the reasonable control of that party, then that party shall, upon giving prior written notice to the other party, be excused from such performance to the extent of such prevention, restriction, or interference, provided that the non performing party shall use reasonable commercial efforts to avoid or remove such causes of non-performance and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Neither party shall be in default if any delay or failure to perform any obligation hereunder is caused by events beyond such party's control.

17. DEFAULT. Any of the following shall constitute a default by Lessee under this Master Agreement and all Schedules: (a) Lessee fails to pay any Rent payment or any other amount payable to Lessor under this Master Agreement or any Schedule on the date due, unless disputed in good faith; or (b) Lessee defaults on or breaches any of the other terms and conditions of the Master Agreement or any Schedules; or (c) any representation or warranty made by Lessee in the Master Agreement proves to be incorrect, false or misleading when made or deemed made; or (d) any change occurs in relation to the business, management, ownership or financial condition of Lessee or any guarantor of all or any portion of Lessee's obligations under the Master Agreement or any Schedule ("Guarantor") that would have a material adverse effect on Lessee's ability to perform its obligations under this Master Agreement or any Schedule or Guarantor's ability to perform its obligations under its guaranty; or (e) Lessee or Guarantor dissolves or otherwise terminates its existence, ceases to do business or becomes insolvent or fails generally to pay its debts as they become due; or (f) any Equipment is levied against, seized or attached; or (g) Lessee or Guarantor makes an assignment for the benefit of creditors; or (h) a proceeding under any bankruptcy, reorganization, arrangement of debt, insolvency or receivership law is filed by or against Lessee or Guarantor (and, if such proceeding is involuntary, it is not dismissed within sixty (60) days after the filing thereof) or Lessee or Guarantor takes any action to authorize any of the foregoing matters; or (i) any letter of credit or guaranty issued in support of a Schedule is revoked, breached, cancelled or terminated (unless consented to in advance in writing by Lessor); or (j) any Guarantor fails to fulfill its obligations in favor of Lessor pursuant to its guaranty; or (k) Lessee merges or consolidates with any other corporation or entity, or sells, rents or disposes of all or substantially all of its assets without the prior written consent of Lessor (each a "Lessee Default").

18. REMEDIES. If a Lessee Default occurs, Lessor may, in its sole discretion, exercise one or more of the following remedies after a sixty (60) day notice to cure and Lessee fails to cure the default within such sixty (60) days: (a) declare all amounts due and to become due in the current year under any or all Schedules to be immediately due and payable; (b) terminate this Master Agreement or any Schedule if the Lessee fails to cure the Lessee Default within the sixty (60) days; (c) take possession of, or render unusable, any Equipment wherever such Equipment may be located, without any court order or other process of law, and no such action shall constitute a termination of any

Schedule; (d) require Lessee to deliver the Equipment to a location specified by Lessor or allow Lessor access to retrieve such Equipment upon thirty (30) days' written notice; or (e) exercise any other right or remedy available to Lessor at law or in equity. To the extent permitted by law, Lessee shall pay Lessor all costs and expenses that Lessor may incur to maintain, safeguard or preserve the Equipment, and other expenses incurred by Lessor in enforcing any of the terms, conditions or provisions of this Master Agreement (including legal fees and collection agency costs). Upon repossession or surrender of any Equipment, Lessor may rent, sell or otherwise dispose of the Equipment in a commercially reasonable manner, with or without notice and at public or private sale, and apply the net proceeds thereof to the amounts owed to Lessor hereunder. Any proceeds of any sale or rent of such Equipment in excess of the amounts owed to Lessor hereunder shall be retained by Lessor. Lessee agrees that with respect to any notice of a sale required by law to be given, thirty (30) days' notice shall constitute reasonable notice. Upon payment of all past due Rent and the Stipulated Loss Value from the date declared due until paid, Lessor will transfer to Lessee all of Lessor's interest in the Equipment for which such Rent and Stipulated Loss Value has been paid, which transfer shall be on an "AS IS, WHERE IS" basis, without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor. With respect to any exercise by Lessor of its right to recover and/or dispose of any Equipment, Lessee acknowledges and agrees as follows: (1) Lessor shall have no obligation, subject to the requirements of commercial reasonableness, to clean-up or otherwise prepare the Equipment for disposition, (2) Lessor may comply with any applicable state or Federal law requirements in connection with any disposition of the Equipment, and any actions taken in connection therewith shall not be deemed to have adversely affected the commercial reasonableness of any such disposition, and (3) Lessor may convey the Equipment on an "AS IS, WHERE IS" basis, and without limiting the generality of the foregoing, may specifically exclude or disclaim any and all warranties, including any warranty of title or the like with respect to the disposition of the Equipment, and no such conveyance or such exclusion or such disclaimer of any warranty shall be deemed to have adversely affected the commercial reasonableness of any such disposition. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be enforced concurrently or separately from time to time.

19. TRUE LEASE; SECURITY INTEREST. LESSEE WAIVES ANY AND ALL RIGHTS AND REMEDIES OTHERWISE GRANTED TO LESSEE BY UCC §§2A-508 THROUGH 2A-522 AS DEEMED APPLICABLE. If and to the extent that this Master Agreement is deemed a security agreement, Lessee hereby grants to Lessor, its successors and assigns, a security interest in all of Lessee's rights under and interest in the Equipment, all additions to the Equipment, and all proceeds of the foregoing. Such security interest secures all obligations owing by Lessee to Lessor. Lessee authorizes Lessor and any assignee of all or any portion of Lessor's interest in the Master Agreement ("Assignee") to file UCC financing statements disclosing Lessor's or Assignee's interest in the Equipment and in any "Additional Collateral" set forth in any Schedule. Lessee shall provide Lessor with at least forty-five (45) days' prior written notice of any change to Lessee's principal place of business, organization or incorporation.

20. ASSIGNMENT. Neither party shall not transfer, sublease, or assign any of its rights or obligations under the Master Agreement or any schedule without the written consent of the other party.

21. TERMINATION. Either party may terminate this Agreement or any Schedule with sixty (60) days' prior written notice, if the other party fails to meet its obligations under this Agreement or any Schedule, such as failure to make payments when due. The sixty (60) day period following the written notice shall serve as cure period and if such failure of Lessee to meet its obligations is not cured during this time, then this Agreement or any applicable Schedule shall be immediately terminated pursuant to Sections 4 and 5 of this Agreement.

22. NOTICES. All notices required or permitted to be given under this Master Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed via certified mail or a nationally recognized overnight courier service to the respective addresses set forth on Exhibit D hereto (or such other address or fax number as either party shall so notify the other).

23. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. This Master Agreement and each Schedule shall be governed by the internal laws (as opposed to conflicts of law provisions) of the State of California. Lessor and Lessee consent to the jurisdiction of any local, state or Federal court located within the County of San Diego, California and waive any objection relating to improper venue or forum non-conveniens to the conduct of any proceeding in any such court. Lessee and lessor hereby expressly waive its right to a jury trial with respect to any action in connection with this Master Agreement.

24. CREDIT REVIEW AND ASSURANCES. Intentionally Omitted.

25. ENTIRE AGREEMENT; AMENDMENTS. This Master Agreement and all attachments including all Schedules together constitute the entire agreement between Lessor and Lessee relating to the leasing of the Equipment, and supersedes all prior agreements relating thereto, whether written or oral, and may not be amended or modified except in a writing signed by the parties hereto.

26. NO WAIVER. Any failure of a party to require strict performance by the other, or any written waiver by the party of any provision hereof, shall not constitute consent or waiver of any other breach of the same or any other provision hereof.

27. INVALIDITY. If any provision of this Master Agreement shall be prohibited by or invalid under law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Master Agreement and any such Schedule.

28. COUNTERPARTS. This Master Agreement may be executed in counterparts, and, when so executed, each counterpart shall be deemed to be an original and such counterparts together shall constitute one and same instrument. The original of each Schedule shall constitute chattel paper for purposes of the UCC. If there are multiple originals of a Schedule, the one marked "Lessor's Copy" or words of similar import shall constitute the only chattel paper.

29. SURVIVAL. All obligations of Lessee to make payments to, or to indemnify, Lessor and all rights of Lessor shall survive the cancellation or termination of this Master Agreement.

30. NON-APPROPRIATION. If Lessee is a state and/or a local government, Lessee represents that it has funds available to pay Rent until the end of its then-current appropriation period, and that Lessee intends to request funds to make payments in each appropriation period from now until the end of the Rental Term. If either sufficient funds are not appropriated to make payments or any other amounts due under a Schedule (to the extent required by applicable law) is not renewed either automatically or by mutual ratification, the Schedule shall terminate and Lessee shall not be obligated to make payments under this Master Agreement or the Lease beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Lessee shall return Equipment in its possession to the Lessor no later than the end of the fiscal year for which payments have been appropriated in accordance with the provisions set forth in Section 5 of this Agreement with the exception that Equipment shall be returned within thirty (30) days.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Master Agreement on the dates specified below.

**LESSEE: THE CITY OF CHULA VISTA ON BEHALF OF
THE CHULA VISTA FIRE DEPARTMENT**

LESSOR: ZOLL MEDICAL CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form

By: _____

Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney

EXHIBIT A
FORM OF EQUIPMENT SCHEDULE

Internal Reference Number: Q-64310-v6

MASTER AGREEMENT SCHEDULE – No. 1

ZOLL Medical Corporation (“Lessor”) and Chula Vista Fire Department (“Lessee”) are parties to the Master Agreement. This Master Agreement Schedule (which shall be identified by the Counterpart Number specified above) and the Master Agreement together comprise a separate Lease between the parties. The terms and conditions of the Master Agreement are hereby incorporated by reference into this Schedule. All capitalized terms used in this Schedule without definition have the meanings ascribed to them in the Master Agreement.

1. LEASE SCHEDULE.

A. Description of Items of Leased Equipment are listed in Exhibit 1 hereto.

B. Rental Term: 120 Months

2. Rent Amount: \$301,047.63/annually starting Net 30 days (excluding any applicable taxes)

Amount is payable: in advance: ☐ monthly ☐ quarterly ☒ **annually** (check one)

Lessee shall pay Lessor the Rent payment specified above for the length of the Rental Term within thirty (30) days after the delivery of the Equipment and monthly, quarterly or annually as set forth above, thereafter on the same date or on the last day of the calendar month if the month does not contain the same Delivery Date.

As used herein, “Replacement Period” shall mean the first 60 months of the Rental Term. Prior to the expiration of the Replacement Period, Lessee shall have the option to elect a one-time replacement of all the Equipment in a category. The replacement devices will be of the same configuration, in new condition and will be the same or newer platform. For example, if Lessee has leased ten defibrillators and ten ventilators, Lessee may elect to replace all ten defibrillators and all ten ventilators, all ten defibrillators and no ventilators or no defibrillators and all ten ventilators, but Lessee shall not be permitted to replace five defibrillators and/or five ventilators. If Lessee replaces Equipment, a second allotment of accessories and disposables will be provided, in the same quantity as the original Schedule, within ninety (90) days of the end of the Replacement Period. If accessories or disposables are not on the original quote and applicable Schedule, then the Lessee shall be financially responsible for new accessories and/or disposables.

For subsequent Equipment Schedules placed for new orders under the Master Agreement (“Subsequent Schedules”), the Replacement Period for such Subsequent Schedules will be adjusted to align with the end of the Replacement Period for the first Master Agreement Schedule. For example, if the Rental Term of the first Schedule is from 01/2025 to 12/2034, then the Replacement Period for such Schedule would expire on 12/2029. If a Subsequent Schedule is entered into with a Rental Term from 05/2027 to 12/2034 because it would be coterminous with the Master Agreement and the Replacement Period for such Subsequent Schedule would still expire on 12/2029 (i.e., the Replacement Period expiration date aligns with the first Schedule). No Subsequent Schedules shall be granted under the Master Agreement after the Replacement Period ends.

3. LEASE PACKAGE:

Lessee will return the Equipment under this program as set forth in Section 5 of the Master Agreement at the expiration or earlier termination of the Rental Term, whichever occurs first.

4. EQUIPMENT LOCATION:

Equipment location shall be as set forth on Attachment 1 of this Schedule.

5. LESSEE’S END-OF-LEASE-TERM.

Fair Market Value. This program package is structured as a Fair Market Value agreement. Upon expiration of the Rental Term, provided that the associated Schedule has not been terminated early by Lessor or Lessee is in accordance with the terms set forth in the Master Agreement, Lessee may purchase all (but not less than all) of the Equipment, for the Fair Market Value as set forth in Section 8 of the Master Agreement (plus all applicable Taxes), which amount shall be due and payable on or before the last day of the applicable Rental Term. If the Lessee fails to return the Equipment, Lessee shall be liable to return the Equipment in accordance with Section 5 of the Master Agreement. In the event Lessor and Lessee are unable to agree on the Fair Market Value of any Equipment, Lessor may (a) select an independent appraiser in its sole discretion to conclusively determine such amount with the cost of the appraiser paid by Lessor or (b) terminate the Schedule and request Lessee to return Equipment in accordance with Section 5 of the Master Agreement.

LESSOR AGREES TO LEASE TO LESSEE AND LESSEE AGREES TO LEASE FROM LESSOR THE EQUIPMENT DESCRIBED IN ATTACHMENT 1 OF THIS SCHEDULE. SUCH LEASE WILL BE GOVERNED BY THE MASTER AGREEMENT AND THIS SCHEDULE, INCLUDING THE TERMS AND CONDITIONS SET FORTH ABOVE. IN THE EVENT OF ANY CONFLICT

BETWEEN THE TERMS OF THIS SCHEDULE AND THE MASTER AGREEMENT, THE TERMS OF THIS SCHEDULE SHALL GOVERN.

IN WITNESS WHEREOF, Lessee and Lessor have executed this Master Agreement Schedule on the dates specified below.

**LESSEE: THE CITY OF CHULA VISTA ON
BEHALF OF THE CHULA VISTA FIRE
DEPARTMENT**

LESSOR: ZOLL MEDICAL CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form

By: _____
Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney

ATTACHMENT 1 OF SCHEDULE

EQUIPMENT LIST

Part Number	QTY	Product Description	Address Where Equipment is Located
601-2431112-01	24	X Series Advanced Monitor/Defibrillator – 12-Lead ECG, Pacing, SpO2, EtCO2, BVM, NIBP, Audio, CPR Expansion Pack, Remote View	
8000-000151	24	RD Rainbow SET MD20-04 EMS Patient Cable, 4ft	
8000-000862	24	LCNS-II Rainbow DCI 8λ SpCO Adult Sensor, 3ft	
8000-000393-01	24	X Series Carry Case, Premium	
8778-89055-WF	24	X Series – Worry-Free Service Plan – 5 Years On-Site At Time of Sale	
6008-9901-61	17	ZOLL X Series Trade In Allowance (EMS Group)	
8700-0730-01	4	AutoPulse® System with Pass Thru	
8700-0753-01	4	AutoPulse SurePower Charger	
8700-0752-01	12	AutoPulse Li-Ion Battery	
8700-000758-01	4	AutoPulse Soft Carry Case – with battery pocket	
90110200499991010	3	AED Pro® Semi-Auto/Manual	
8000-0860-01	3	AED Pro non-rechargeable lithium battery pack	
8000-0838	3	AED Pro ECG Cable AAMI	
8900-0402	3	CPR Stat-padz HVP Multi-Function CPR Electrodes – 1 pair	
8900-0810-01	3	Pedi-padz II Pediatric Multi-Function Electrodes	
8778-89004-WF-AP	4	AutoPulse Worry-Free Service Plan 4 Year	

EXHIBIT B
ALS/BLS Software Solutions Master Application Service Provider Agreement
(This EXHIBIT B only applies if RescueNet® CaseReview is included in the applicable quote)

1. Schedules. Lessor shall provide to Lessee the ASP Services, Implementation Services and Support Services identified in any Schedule under the ZOLL One Program Master Agreement (“Master Agreement”) in accordance with the terms of this ALS/BLS Software Solutions Master Application (“ASP Agreement”). ASP Services are further defined in Section 2. Implementation Services are further defined in Section 3. Support Services are further defined in Section 4. The ASP Services, Implementation Services, and Support Services are each, and are collectively, “**Services**.” The terms and conditions set forth in this ASP Agreement shall only apply to Equipment leased under the associated Schedule and the Master Agreement. For the sake of clarity, these terms and conditions do not apply to any Lessor patient care reporting software, which would be purchased under a separate agreement.

2. ASP Services. “ASP Services” means the hosting and maintenance of Lessor software, as modified, updated, and enhanced (the “**Underlying Software**”), for remote electronic access and use by Registered Users on the website with a unique URL to be provided by Lessor to Lessee (the “**Lessor Site**”) in substantial conformity with the instructions for use, documentation and users manuals from time-to-time provided by Lessor (the “**Documentation**”), as listed in any Schedule for such services and before that Schedule has expired or been terminated in accordance with the Master Agreement. Lessee acknowledges that the ASP Services are only compatible with Lessor equipment that has been enabled and configured for use with the ASP Services in accordance with the Documentation and only with the browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation.

2.1. Provision of ASP Services. Subject to the terms and conditions of the Master Agreement, Lessor will use commercially reasonable efforts to make the ASP Services available to Lessee and Lessee’s employees, directors, principals, partners, consultants and agents authorized to use ASP Services on behalf of Lessee and registered through the Lessor Site for such use (“**Registered Users**”) through the Lessor Site over normal network connections in accordance with the Documentation, excepting downtime due to necessary maintenance and troubleshooting. Lessee, not Lessor, shall be responsible for controlling Registered Users and protection of confidentiality of its login identifications and passwords. Lessee acknowledges that (i) it is responsible for maintaining its interface and connectivity to the ASP Services and (ii) any facilities used for provision of the ASP Services may be owned or operated by Lessor, or a Lessor affiliate or a third party, or any combination of such facilities, as determined by Lessor. Lessee acknowledges that Lessor may modify and upgrade the ASP Services, on an ongoing basis, to improve or adapt the ASP Services. Without limiting the foregoing, Lessor will have the right, in its sole discretion, to develop, provide and market new, upgraded or modified ASP Services to Lessee, including adding, removing or modifying the functionality or features of the ASP Services accessible by Registered Users. Lessor will use commercially reasonable efforts to notify Lessee within a reasonable period of time prior to the implementation of such changes so that Lessee is reasonably informed of alterations to the ASP Services that will affect the ASP Services and Lessee’s use of them. Notwithstanding anything to the contrary in the Master Lessor may cease providing any ASP Services upon at least six months advance notice to Lessee.

2.2. Access Software. Subject to the terms and conditions of this ASP Agreement, Lessor grants to Lessee, during the Term, a non-exclusive, non-transferable, non-sublicensable license for Registered Users to access and use the ASP Services using the Lessor software that Registered Users may download at the Lessor Site to access the ASP Services, as modified, updated and enhanced (the “**Access Software**”), each as made available to Lessee through the Lessor Site, solely for Lessee’s internal business purposes and solely in accordance with the Documentation. Access Software and Underlying Software are, collectively, the “**Software**.”

2.3. Restrictions. Lessee shall not, and shall not permit any third party to: (a) use, reproduce, modify, adapt, alter, translate or create derivative works from the ASP Services, Software or Documentation; (b) merge the ASP Services, Software or Documentation with other software or services; (c) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer or allow access to the ASP Services, Software or the Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the Source Code for the ASP Services or Software; (e) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the ASP Services, Software or Documentation; or (f) otherwise use or copy the ASP Services, Software or Documentation in any manner not expressly permitted by the Master Agreement. Lessee agrees not to use the ASP Services in excess of its authorized login protocols. Lessee shall immediately notify Lessor of any unauthorized use of Lessee’s login ID, password or account or other breach of security. If Lessee becomes aware of any actual or threatened activity contemplated by the restrictions on use set forth in this section, Lessee will, and will cause Registered Users to, immediately take all reasonable measures necessary to stop the activity or threatened activity and to mitigate the effect of such activity including: (i) discontinuing and limiting any improper access to any data; (ii) preventing any use and disclosure of improperly obtained data; (iii) destroying any copies of improperly obtained data that may have been made on their systems; (iv) otherwise attempting to mitigate any harm from such events; and (v) immediately notifying Lessor of any such event so that Lessor may also attempt to remedy the problem and prevent its future occurrence.

2.4. Service Level Targets.

2.4.1. Downtime. “Downtime,” expressed in minutes, is any time the ASP Services are not accessible to Registered Users.

2.4.2. Planned Downtime. “Planned Downtime” is Downtime during which ASP Services may not be available in order for Lessor to continue to provide commercially reasonable services, features and performance to its customers. Planned Downtime includes, but not limited to: (a) Standard Maintenance; and (b) Emergency Maintenance. “Standard Maintenance” is performed when upgrades or system updates are desirable. “Emergency Maintenance” is performed when a critical system update must be applied quickly to avoid significant Downtime. Standard Maintenance may be performed weekly on Monday and Wednesday between the hours of 7 p.m. to 11 p.m. in Broomfield, Colorado. Lessor will provide Lessee with notice at least 24 hours in advance of Standard Maintenance.

2.4.3. Excused Downtime. “Excused Downtime” time is Downtime caused by: (a) services, software or hardware provided by anyone or any entity other than Lessor, (b) software, services or systems operating outside of a Lessor Site, including any software or systems operating on a Lessee’s premises (including Lessor software); (c) a Force Majeure Event or (d) Lessee’s failure to comply with its obligations under the Master Agreement or use of the ASP Services in ways that were not intended.

2.4.4. Unplanned Downtime. Unplanned Downtime in a calendar month is expressed as a percentage calculated as follows:

$$\frac{(\text{Downtime} - (\text{Planned Downtime} + \text{Excused Downtime}))}{\text{Total number of minutes in the calendar month}} \times 100 = x \%, \text{ where “x” is Unplanned Downtime.}$$

2.4.5. Unplanned Downtime Goal. Lessor endeavors to provide the ASP Services such that there is less than 1% of Unplanned Downtime in a calendar month (the “**Unplanned Downtime Goal**”). The ASP Services covered by the Unplanned Downtime Goal are those for which Lessee has paid all Fees when due and is using in the course of carrying out its normal business operations in accordance with this ASP Agreement and the Master Agreement.

2.4.6. Revocation of Administrative Rights. Notwithstanding anything to the contrary in this ASP Agreement, Lessor may revoke administrative rights, including database access rights, if the use of any such rights results in Downtime.

2.4.7. Lessee Content; Security.

2.4.7.1. Lessee Content. As between Lessor and Lessee, Lessee will retain all right, title and interest in and to all data, information or other content provided by Lessee in its use of the ASP Services ("**Lessee Content**"); *provided, however*, that Lessor may de-identify Lessee Content and use it for any lawful purpose not prohibited by HIPAA.

2.4.7.2. Security. Subject to Lessee's obligations under this ASP Agreement, Lessor will implement commercially reasonable security measures within the ASP Services in an attempt to prevent unlawful access to Lessee Content by third parties. Such measures may include, where appropriate, use of updated firewalls, commercially available virus screening software, logon identification and passwords, encryption, intrusion detection systems, logging of incidents, periodic reporting, and prompt application of current security patches and virus definitions.

2.4.7.3. Retention of Lessee Content. Although Lessor will use commercially reasonable efforts to maintain the integrity of the Lessee Content, to back up the Lessee Content, and to provide full and ongoing access to the ASP Services, loss of access to the ASP Services and loss of Lessee Content may occur. Lessee will be responsible for compliance with all records retention requirements applicable to Lessee. Lessor will not be responsible for any loss, corruption of or inaccessibility of the Lessee Content due to interruption in the ASP Services or otherwise arising out of circumstances not within Lessor's control.

2.4.7.4. Availability of Lessee Content. It is Lessee's responsibility to maintain any Lessee Content that it requires for archival purposes, ongoing management of its operations and compliance with applicable records retention requirements. Unless specified otherwise in the Master Agreement, Lessor will store Lessee Content, other than Inactive Lessee Content as defined below (the "**Active Lessee Content**"), in Lessor's working data set until the earlier of (i) five years (calculated from the date of creation of such Lessee Content, or Lessor's receipt of such Lessee Content, whichever is later) or (ii) the expiration or termination of this ASP Agreement or the Schedule under which such Active Lessee Content was stored (the "**Active Retention Period**"). Upon the expiration of the Active Retention Period, Lessor will notify Lessee in writing and will provide Lessee the option, which Lessee shall exercise by informing Lessor in writing, within 30 days of receiving the notice, that either (a) Lessee wishes to receive Active Lessee Content in a database determined by Lessor in its sole and absolute discretion (a "**Database**"), or (b) Lessee will pay Lessor, at Lessor's then-current storage rates and upon Lessor's then-current terms and conditions, to continue to store the Active Lessee Content. If Lessee fails to exercise one of the foregoing options within such 30-day period, Lessor will have the right to destroy the Active Lessee Content. During the time Lessor stores Lessee Content for Lessee hereunder, Lessor may periodically identify Lessee Content that has had no activity associated with it for at least 180 days ("**Inactive Lessee Content**") and will notify Lessee in writing of its intent to remove the Inactive Lessee Content from Lessor's working data set and destroy such data, unless Lessee requests, in writing, within 30 days of receiving the notice from Lessor, that either (z) Lessee wishes to receive the Inactive Lessee Content in a Database, or (y) Lessee will pay Lessor, at Lessor's then-current storage rates and upon Lessor's then-current terms and conditions, to continue to store such Inactive Lessee Content. If Lessee fails to exercise one of the foregoing options within such 30-day period, Lessor will have the right to destroy the applicable Inactive Lessee Content in its possession or under its control. Except for this Section 3.4.7.4, the terms of Section 3.4 (including, without limitation, the Unplanned Downtime Goal) do not apply to Lessee's access of Inactive Lessee Content. Lessee represents, warrants and agrees that it (A) is solely responsible for determining the retention period applicable to it with respect to Lessee Content maintained by Lessor; (B) has consulted with or has had the opportunity to consult with legal, information governance or records management professionals; and (C) is not relying upon Lessor to assist with determining the records maintenance or retention requirements applicable to it.

2.4.8. Modifications. Changes to this Section 2.4 may be made from time to time at Lessor's sole discretion. Lessee will be notified of any such changes that are material.

3. Implementation Services. Lessor shall provide ASP Services implementation, training and any related services identified in a Schedule (the "**Implementation Services**"). Lessee shall, in a timely manner and at its own expense, cooperate and provide or make available to Lessor access to the Lessee's premises, systems, telephone, terminals and facsimile machines and all relevant information, documentation and staff reasonably required by Lessor to enable Lessor to perform the Implementation Services. Lessee acknowledges that any time frames or dates for completion of the Implementation Services set out in a Schedule are estimates only and the ability to meet them is influenced by a range of factors including, without limitation, response times and level of cooperation of Lessee. Any obligations as to time are therefore on a "reasonable efforts" basis only and Lessor shall not be liable for failure to meet time frames or completion dates unless solely due to Lessor's gross negligence.

4. Support Services. Lessor shall provide the following Support Services for ASP Services, except that Lessor will have no obligation to provide such Support Services if any payments are past due.

4.1. Support.

4.1.1. Emergency Support. Lessor shall provide telephone support to Lessee for 24 hours a day, 7 days a week, to address Errors that prevent Lessee from using Supported ASP Services for a purpose for which Lessee has an immediate and material need. "**Supported ASP Services**" means the ASP Services for which Lessee has paid the then-current Fees. "**Supported Environment**" means a browser and other technical environment that supports the use of the ASP Services in accordance with the Documentation. "**Error**" means a reproducible defect in the Supported ASP Services when operated in accordance with the Documentation in a Supported Environment that causes the Supported ASP Services not to operate substantially in accordance with such Documentation.

4.1.2. Technical Support. Lessor shall provide telephone support to Lessee during 6 a.m. to 6 p.m. Eastern Time, Monday to Friday, excluding Lessor holidays ("**Business Hours**") to address all other Errors relating to any Supported ASP Services. Such telephone support will include (i) clarification of functions and features of the Supported ASP Services; (ii) clarification of the Documentation; (iii) guidance in operation of the Supported ASP Services; (iv) assistance in identifying and verifying the causes of suspected Errors in the Supported ASP Services; and (v) advice on bypassing identified Errors in the Supported ASP Services, if reasonably possible. Responses to such reporting shall be provided at a minimum within twenty-four (24) hours during Business Hours.

4.1.3. Resolution. Lessor shall use commercially reasonable efforts to provide a modification or workaround to Supported ASP Services that resolves an Error in all material respects ("**Resolution**").

4.1.4. Expenses. Support Services provided hereunder shall be provided from Chelmsford, Massachusetts or Broomfield, Colorado, as determined in Lessor's sole discretion. Should Lessee request that Lessor send personnel to Lessee's location to resolve any Error in the Supported ASP Services, Lessor may charge Lessee a fee of \$2,500 for each day Lessor personnel is at Lessee's location.

4.1.5. Exceptions. Lessor shall have no responsibility under this ASP Agreement to fix any Errors arising out of or related to the following causes: (a) Lessee's modification or combination of the Access Software (in whole or in part), (b) use of the Supported ASP Services in an environment other than a Supported Environment; or (c) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of media not furnished by Lessor; excessive heating; fire and smoke damage; operation of the Supported ASP Services with other media and hardware, software or telecommunication interfaces; or causes other than ordinary use. Any corrections performed by Lessor for such Errors shall be made, in Lessor's reasonable discretion, at Lessor's then-current time and material charges. Lessor will provide the Support Services only for the most current release and the one immediately preceding major release of any Access Software. Notwithstanding anything to the contrary in the Master Agreement, (i) Lessor may cease providing Support Services for any ASP Services upon at least six (6) months advance notice to Lessee of such cessation and (ii) Support Services do not cover Third Party Products or Services (defined below).

4.2. Conditions and Limitations. Lessee shall provide Lessor with access to Lessee's personnel and its equipment. This access must include the ability to remotely access the equipment on which the Supported ASP Services are operating and to obtain the same access to the equipment as those of Lessee's employees having the highest privilege or clearance level. Lessor will inform Lessee of the specifications of the remote access methods available and associated software needed, and Lessee will be responsible for the costs and use of said equipment. Fees for third party software and services are set by the owner of such software.

5. Warranties.

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5.1. Implementation Services and Support Services. Subject to Lessee being current with its payments under the Master Agreement, any Implementation Services or Support Services provided to Lessee will be performed with due care in a professional and workmanlike manner. Lessor shall perform the Implementation Services or Support Services again if Lessor was unsuccessfully in completing the Implementation Services and/or Support Services. Lessee shall notify the Lessor in writing within thirty (30) days following performance of the unsuccessful Implementation Services or Support Services, specifying the nature of the unsuccessful services in reasonable detail.

5.2. ASP Services and Access Software. Subject to the Lessee being current with payments under the Master Agreement, Lessor states with respect to any ASP Services that (i) Lessor has the right to license the Access Software and Documentation and make the ASP Services available to Lessee pursuant to this ASP Agreement and (ii) the ASP Services, when used as permitted and in accordance with the Documentation, will materially conform to the Documentation. Lessor does not warrant that Lessee's use of the ASP Services will be error free or uninterrupted. Lessee will notify Lessor in writing of operating issues with respect to any ASP Services prior to the expiration or termination of the associated Schedule for such ASP Services. If Lessor is unable to provide a correction or workaround pursuant to the terms governing the provision of the ASP Services after using commercially reasonable efforts, Lessor may terminate such Schedule upon written notice to Lessee. Any such correction or workaround shall not extend the term of such Schedule. This Section 5.2 sets forth Lessee's exclusive remedy, and Lessor's entire liability, for operating issues for the ASP Services contained herein.

5.3. Warranty Disclaimers. The remedies for the Software and Services are solely and expressly as set forth in Section 5.1 and Section 5.2 and are expressly qualified, in their entirety, by this Section 5.3. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 AND SECTION 5.2, (A) THE SOFTWARE AND SERVICES ARE PROVIDED STRICTLY "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, WRITTEN OR ORAL; (B) LESSOR DOES NOT PROMISE THAT THE SOFTWARE OR SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT THEY ARE SUITABLE FOR THE PARTICULAR NEEDS OF CUSTOMER, REGISTERED USERS OR ANY THIRD PARTY; AND (C) LESSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE IN TRADE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS ASP AGREEMENT, AND THAT NO WARRANTIES ARE MADE BY ANY OF LESSOR'S LICENSORS OR SUPPLIERS WITH RESPECT TO THIRD PARTY PRODUCTS OR SERVICES. Lessee acknowledges and agrees that, in entering into this ASP Agreement, it has not relied upon the future availability of any new or enhanced feature or functionality, or any new or enhanced product or service, including, without limitation, updates or upgrades to Lessor's existing products and services. Lessor's performance obligations hereunder are limited to those expressly enumerated herein, and payment for Lessor's performance obligations shall be due as described herein.

6. Confidentiality. Neither party will use any trade secrets, information, or other material, tangible or intangible, that relates to the business or technology of the other party and is marked or identified as confidential or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential ("Confidential Information") for any purpose not expressly permitted by this ASP Agreement, and will further disclose the Confidential Information of the party disclosing it ("Disclosing Party") only to the employees or contractors of the party receiving it ("Receiving Party") who have a need to know such Confidential Information for purposes of this ASP Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. The ASP Services, Software and Documentation shall be Lessor's Confidential Information (including without limitation any routines, subroutines, directories, tools, programs, or any other technology included in the Software), notwithstanding any failure to mark or identify it as such. The Receiving Party's obligations under this Section 7 with respect to any Confidential Information of the Disclosing Party will terminate when and to the extent the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) necessary for the Receiving Party to enforce its rights under this ASP Agreement in connection with a legal proceeding; or (ii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

7. Indemnification.

7.1. By LESSOR. Lessor will defend, at its own expense, any action against Lessee or its or any of its agents, officers, director, or employees ("Lessee Parties") brought by a third party alleging that any Software or Services infringe any U.S. patents or any copyrights or misappropriate any trade secrets of a third party, and Lessor will pay those costs and damages finally awarded against the Lessee Parties in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Lessee: (a) notifying Lessor promptly in writing of such claim or action; (b) giving Lessor sole control of the defense thereof and any related settlement negotiations; and (c) cooperating with Lessor and, at Lessor's request and expense, assisting in such defense. If any of the Software or Services become, or in Lessor's opinion is likely to become, the subject of an infringement claim, Lessor may, at its sole option and expense, either: (i) procure for Lessee the right to continue using such Software or Services; (ii) modify or replace such Software or Services with substantially similar software or services so that such Software or Services becomes non-infringing; or (iii) terminate this ASP Agreement, in whole or in part. Notwithstanding the foregoing, Lessor will have no obligation under this Section 7.1 or otherwise with respect to any infringement claim based upon: (1) use of any of the Software or Services not in accordance with this ASP Agreement; (2) any use of any Software or Services in combination with products equipment, software, services or data not supplied by Lessor if such infringement would have been avoided but for the combination with other products, equipment, software, services or data; (3) the failure of Lessee to implement any replacements, corrections or modifications made available by Lessor for any Software or Services including, but not limited to, any use of any release of the Software other than the most current release made commercially available by Lessor; (4) any Lessee Content; or (5) any modification of any Software or Services or use thereof by any person other than Lessor or its authorized agents or subcontractors. This Section 8 states Lessor's entire liability and the exclusive remedy for any claims of infringement.

7.2. By Lessee. Lessee shall indemnify, defend and hold Lessor and its agents, officers, directors and employees (the "Lessor Parties") harmless from and against any and all liabilities, losses, expenses, damages and claims (collectively, "Claims") that arise out of the following except to the extent the Claims are due to the gross negligence, intentional misconduct or breach of this ASP Agreement by the Lessor Parties: (i) information provided to any of the Lessor Parties by any of the Lessee Parties; (ii) any of the Lessee Parties' use or misuse of any of the Software or Services, including without limitation in combination with Lessee's software or services or third party software or services; (iii) any modifications made by any of the Lessee Parties to any of the Software or Services; (iv) infringement by any of the Lessee Parties of any third party intellectual property right; (v) Taxes (other than taxes based on Lessor's net income) and any related penalties and interest, arising from the payment of the Fees or the delivery of the Software and Services to Lessee; and (ix) any violation of laws or regulations, including without limitation applicable export and import control laws and regulations in the use of any of the Software or Services, by any of the Lessee Parties.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL LESSOR OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS OR DIRECTORS, BE LIABLE, EVEN IF ADVISED OF THE POSSIBILITY, FOR: (i) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), (ii) LOSS OF PROFIT, DATA, BUSINESS OR

GOODWILL, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR (iii) ANY LOSSES, COSTS OR DAMAGES ASSOCIATED WITH CUSTOMER'S PRODUCTS OR OTHER ELEMENTS INCORPORATED OR USED THEREWITH WHICH WERE NOT PROVIDED BY LESSOR OR WITH RESPECT TO ANY MODIFICATIONS MADE TO THE SOFTWARE OR SERVICES OR MISUSE OF THE SOFTWARE OR SERVICES. LESSOR'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE PRO-RATED PORTION AMOUNT PAID TO LESSOR BY CUSTOMER FOR THE SOFTWARE AND SERVICES PROVIDED UNDER THIS ASP AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. Lessee acknowledges that these limitations reflect the allocation of risk set forth in this ASP Agreement and that Lessor would not enter into this ASP Agreement without these limitations on its liability. Lessee agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. The remedies in this ASP Agreement are Lessee's sole and exclusive remedies. In addition, Lessor disclaims all liability of any kind of Lessor's licensors and suppliers, for third party products or services, and for the actions or omissions of Lessee's representatives.

9. Ownership. All right, title and interest, including but not limited to all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing, in and to the following are the exclusive property of Lessor (or, as the case may be, its subsidiaries, licensors and suppliers): (i) ASP Services, Software, Documentation, and all proprietary technology used by Lessor to perform its obligations under this ASP Agreement; (ii) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Lessor makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Services; (iii) the fully compiled version of any of the foregoing software programs that can be executed by a computer and used without further compilation (the "**Executable Code**"); (iv) the human readable version of any of the foregoing software programs that can be compiled into Executable Code (the "**Source Code**"); and (v) all enhancements, modifications, improvements and derivative works of each and any of the foregoing (the "**Lessor Property**"). If any derivative work is created by Lessee from the Software or Services, Lessor shall own all right, title and interest in and to such derivative work. Any rights not expressly granted to Lessee hereunder are reserved by Lessor.

10. Term and Termination.

10.1. Term. The term of this ASP Agreement ("**Term**") begins on the effective date of the associated Schedule incorporating this ASP Agreement and continues until it is terminated. The term of each associated Schedule begins on the effective date of such Schedule and continues until it expires or is terminated.

10.2. Termination. Either party may terminate this ASP Agreement without cause upon thirty (30) days' prior written notice to the other party. Either party may terminate this ASP Agreement if the other party materially defaults in the performance of any of its obligations hereunder and fails to cure such default within twenty (20) days after written notice from the non-defaulting party. This ASP Agreement may not extend beyond the term of the associated Schedule.

10.3. Effects of Termination. Upon expiration or termination of this ASP Agreement for any reason: (a) all amounts, if any, owed to Lessor for ASP Service or the associated Schedule that has expired or been terminated (the "**Expired or Terminated Document**") before such termination or expiration will become immediately due and payable; (b) Lessee's right to access the ASP Services, and all licensed rights granted, in the Expired or Terminated Document will immediately terminate and cease to exist; and (c) Lessee must (i) promptly discontinue all use of any ASP Services provided under the Expired or Terminated Document (ii) erase all copies of Access Software, if any, from Lessee's computers and the computers of its customers and return to Lessor or destroy all copies of such Access Software and related Documentation on tangible media in Lessee's possession and (iii) return or destroy all copies of the Documentation in Lessee's possession or control; (d) each party shall promptly discontinue all use of the other party's Confidential Information disclosed in connection with the Expired or Terminated Document and return to the other party or, at the other party's option, destroy, all copies of any such Confidential Information in tangible or electronic form.

11. General Provisions.

11.1. Compliance with Laws. Lessee shall comply with all applicable laws and regulations, and obtain required authorizations, concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Lessee will not use any ASP Services for any purpose in violation of any applicable laws. Lessor may suspend performance if Lessee violated applicable laws or regulations.

11.2. Audits and Inspections. Upon written request from Lessor, Lessee shall furnish Lessor with a certificate signed by, at least, Vice President level executive of Lessee stating that the ASP Services are being used strictly in accordance with the terms and conditions of this ASP Agreement. During the Term and for a period of six months following the termination or expiration of this ASP Agreement, upon prior written notice, Lessor will have the right, during normal business hours, to inspect, or have an independent audit firm inspect, Lessee's records relating to Lessee's use of the ASP Services to ensure it is in compliance with the terms of this ASP Agreement.

11.3. Assignments. Assignment terms are set forth in the Master Agreement and shall also apply to this ASP Agreement.

11.4. U.S. Government End Users. If Lessee is a branch or agency of the United States Government, the following provision applies. The Software and Documentation are composed of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202 1 (JUN 1995) and 227.7202 3 (JUN 1995).

11.5. Notices. All notices, consents, and approvals under this ASP Agreement shall be the same terms as set forth in the Master Agreement.

11.6. Governing Law and Venue; Waiver of Jury Trial. This ASP Agreement will be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this ASP Agreement. Any action or proceeding arising from or relating to this ASP Agreement shall be brought in a federal or state court in the Commonwealth of Massachusetts, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. Each party hereby knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury in respect of any litigation arising out of or in connection with this agreement.

11.7. Remedies. Except as otherwise expressly provided in this ASP Agreement, the parties' rights and remedies under this ASP Agreement are cumulative. Lessee acknowledges that the Software and Services are built on valuable trade secrets and proprietary information of Lessor, that any actual or threatened breach hereof will constitute immediate, irreparable harm to Lessor for which monetary damages would be an inadequate remedy, and that Lessor will be entitled to injunctive relief for such breach or threatened breach. Lessee further agrees to waive and hereby waives any requirement for the security or the posting of any bond in connection with such remedies. Such remedies shall not be considered to be the exclusive remedies for any such breach or threatened breach but shall be in addition to all other remedies available at law or equity to Lessor.

11.8. Waivers. Any waiver or failure to enforce any provision of this ASP Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.9. Severability. If any provision of this ASP Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this ASP Agreement will continue in full force and effect. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this ASP Agreement, and this ASP Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

11.10. Independent Contractors. The parties are entering into, and will perform, this ASP Agreement as independent contractors. Nothing in this ASP Agreement will be construed to make either party the agent of the other for any purpose whatsoever, to authorize either party to enter into any contract or assume any obligation on behalf of the other or to establish a partnership, franchise or joint venture between the parties.

11.11. Third Parties. If Lessee engages a third-party provider (“**Third Party Provider**”) to deliver products or services, including without limitation software, integrated into or receiving data from or accessing the ASP Services (“**Third Party Products or Services**”), Lessee represents, warrants and agrees that: (i) Lessee is solely responsible for any amounts owed to Third Parties Provider, (ii) Lessor shall have no liability, and makes no representation, with respect to such Third Party Products or Services; and (iii) the Third Party Provider shall not be an agent of Lessor. To the extent the ASP Services or Software contains software owned by a third party for which Lessor has a license agreement with a third party, the ASP Services and Software and all rights granted hereunder are expressly limited by and subject to any license agreements Lessor may have for such software.

11.12. Force Majeure. Neither party shall be liable for failure of performance hereunder arising out of causes beyond such party’s reasonable control and without such party’s fault or negligence, including, but not limited to, failure of its suppliers to timely deliver acceptable parts or services, any act or omission of Lessee that interferes with or impedes Lessor’s performance hereunder, acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures (a “**Force Majeure Event**”).

11.13. Amendment; No Third-Party Beneficiaries; Survival. This ASP Agreement may not be amended or changed, or any provision hereof waived except in writing signed by both parties. Any different or additional terms in any purchase order, confirmation or similar form issued or otherwise provided by Lessee but not signed by an authorized representative of Lessor shall have no force or effect. There are no third-party beneficiaries of this ASP Agreement. Those provisions of this ASP Agreement that may be reasonably interpreted as surviving termination of this ASP Agreement or the survival of which is necessary for the interpretation or enforcement of this ASP Agreement shall continue in full force and effect in accordance with their terms notwithstanding the termination hereof including, but not limited to, Section 6 (Confidentiality), Section 7 (Indemnification), Section 8 (Limitation on Liability), Section 9 (Ownership), Section 10.3 (Effects of Termination) and Section 11 (General Provisions). This ASP Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

12. HIPAA. This Section 12 applies if and to the extent that Lessor creates, receives, maintains or transmits, directly or indirectly, any protected health information of Lessee (“**PHI**”) in the course of providing Software or Services to Lessee. Capitalized terms used but not defined in this Section 12 have the meanings assigned to them elsewhere in the ASP Agreement or, if not defined therein, as defined in the Health Insurance Portability and Accountability Act of 1996 (P.L. 104 191), 42 U.S.C. Section 1320d, et seq., and regulations promulgated thereunder, as amended from time to time (such statute and regulations collectively referred to as “**HIPAA**”). “**Covered Entity**” as used herein means Lessee. “**Business Associate**” as used herein means Lessor. The purpose of this Section 12 is to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing PHI and business associates under HIPAA.

12.1. Applicability. This Section 12 applies if and to the extent that Business Associate creates, receives, maintains or transmits, directly or indirectly, any PHI in the course of providing Software or Services to Covered Entity.

12.2. Compliance and Agents. Business Associate agrees that, to the extent it has access to PHI, Business Associate will fully comply with the requirements of this Section 12 with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth herein.

12.3. Use and Disclosure; Rights. Business Associate agrees that it shall not use or disclose PHI except as permitted under this ASP Agreement, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this ASP Agreement, (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Master Agreement, or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business Associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law, or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

12.4. Safeguards. Business Associate agrees to develop, document, use, and keep current appropriate procedural, physical, and electronic safeguards, as required in 45 C.F.R. §§164.308 - 164.312, sufficient to prevent any use or disclosure of electronic PHI other than as permitted or required by this ASP Agreement.

12.5. Minimum Necessary. Business Associate will limit any use, disclosure, or request for use or disclosure to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.

12.6. Report of Improper Use or Disclosure. Business Associate shall report to Covered Entity any information of which it becomes aware concerning any use or disclosure of PHI that is not permitted by this ASP Agreement and any security incident of which it becomes aware. Business Associate will, following the discovery of a breach of “**unsecured protected health information**,” as defined in 45 C.F.R. § 164.402, notify Covered Entity of such breach within 15 days. The notice shall include the identification of each individual whose unsecured protected health information has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this ASP Agreement.

12.7. Individual Access. In accordance with an individual’s right to access to his or her own PHI in a designated record set under 45 CFR §164.524 and the individual’s right to copy or amend such records under 45 CFR §164.524 and §164.526, Business Associate shall make available all PHI in a designated record set to Covered Entity to enable the Covered Entity to provide access to the individual to whom that information pertains or such individual’s representative.

12.8. Amendment of and Access to PHI. Business Associate shall make available for amendment PHI in a designated record set and shall incorporate any amendments to PHI in a designated record set in accordance with 45 CFR §164.526 and in accordance with any process mutually agreed to by the parties.

12.9. Accounting. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to an individual’s request for an accounting of disclosures of their PHI in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity the information needed to enable Covered Entity to provide the individual with an accounting of disclosures as set forth in 45 CFR §164.528.

12.10. DHHS Access to Books, Records, and Other Information. Business Associate shall make available to the U.S. Department of Health and Human Services (“**DHHS**”), its internal practices, books, and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of, Covered Entity for purposes of determining the Covered Entity’s compliance with HIPAA.

12.11. Individual Authorizations; Restrictions. Covered Entity will notify Business Associate of any limitation in its notice of privacy practices, any restriction to the use or disclosure of PHI that Covered Entity has agreed to with an individual and of any changes in or revocation of an authorization or other permission by an individual, to the extent that such limitation, restriction, change, or revocation may affect Business Associate’s use or disclosure of PHI.

12.12. HITECH Act Compliance. Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), including all privacy and security regulations issued under the HITECH Act that apply to Business Associate.

12.13. Breach; Termination; Mitigation. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Section 12, Covered Entity and Business Associate shall take any steps reasonably necessary to cure such breach and make Business Associate comply, and, if such steps are unsuccessful, Covered Entity may terminate this ASP Agreement. Business Associate shall take reasonable actions available to it to mitigate any detrimental effects of such violation or failure to comply.

12.14. Return of PHI. Business Associate agrees that upon termination of this ASP Agreement, and if feasible, Business Associate shall (a) return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate has continued to maintain in any form or manner and retain no copies of such information or, (b) if such return or destruction is not feasible, immediately notify Covered Entity of the reasons return or destruction are not feasible, and extend indefinitely the protection of this Section 12 to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI not feasible.

12.15. De-identified Health Information. Business Associate may de-identify any and all PHI and may create a "Limited Data Set" in accordance with 45 C.F.R. § 164.514(b) & (e). Covered Entity acknowledges and agrees that de-identified information is not PHI and that Business Associate may use such de-identified information for any purpose not prohibited by HIPAA. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

12.16. Survival. All representations, covenants, and agreements in or under this Section 12 shall survive the execution, delivery, and performance of this ASP Agreement.

12.17. Further Assurances; Conflicts. Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Section 12. The terms and conditions of this Section 12 will override and control any expressly conflicting term or condition of the Master Agreement. All non-conflicting terms and conditions of the Master Agreement shall remain in full force and effect. Any ambiguity shall be resolved in a manner that will permit Covered Entity to comply with HIPAA. For the avoidance of doubt, a limitation on liability in the Master Agreement does not conflict with this Section 12.

12.18. Applicable Law. The parties acknowledge and agree that HIPAA may be amended and additional guidance or regulations implementing HIPAA may be issued after the date of the execution of this ASP Agreement and may affect the parties' obligations hereunder. The parties agree to take such action as is necessary to amend this ASP Agreement from time in order as is necessary for Covered Entity to comply with HIPAA.

EXHIBIT C
Worry-Free Service Plan

WORRY-FREE SERVICE PLAN

The following repair services are included under the Worry-Free Service Plan (“Worry-Free”). Should Equipment be deemed unrepairable caused by inappropriate use, mishandling or storage by the City, based on Lessor’s generally accepted technical support practices, replacement of such Equipment shall be the responsibility of Lessee.

1. Field Preventive Maintenance at Lessee’s facility, including:
 - Provide documentation for regulatory agencies
 - Manage and track Lessee’s Preventive Maintenance (“PM”) schedule
 - Test all device parameters
 - Identify and/or troubleshoot potential issues and make recommendations
 - Troubleshoot device(s) and/or accessories under contract
 - Inspect battery chargers and review battery management as required
2. Telephone Support 24/7
3. General software updates
4. Free loaner equipment as determined by Lessor
5. Technical support for Equipment as described on the ZOLL website (<https://www.zoll.com/contact/technical-support>)
6. Waiver of shipping and handling fees
7. Waiver of Minimum Service Fee
8. Repair or replacement of parts within the charger that are subject to normal wear and burnout during normal use, including but not limited to, lamps, fuses, batteries, patient cables and accessories.
9. Repair or replacement, at Lessor’s sole option, at no charge to the Lessee, of the charger if it is affecting the integrity of the device.
10. SurePower chargers (parts and labor covered for normal wear and tear as determined by Lessor)
11. ECG 12-lead cable replacement upon failure, excluding physical damage, with one replacement per unit per year.
12. On-site device deployment when repaired unit is returned
13. Lithium-ion SurePower II Battery replacement (upon end of life), subject to the following:
 - Batteries must be maintained per Lessor’s recommended maintenance program
 - Batteries are replaced upon failure, one for one, throughout the term of the Schedule, should the SurePower battery or SurePower Charger display a fault.
 - Batteries must be evaluated, and the failure confirmed by Lessor Technical Support and/or an on-site field service technician.
 - Up to three batteries per device will be covered for batteries acquired from Lessor in the last 24 months. (When service plan purchased post-sale.)
 - For batteries acquired from Lessor over twenty-four (24) months prior, one battery per device will be covered.
14. Accidental damage coverage. Includes one device outer housing replacement per year per device. Catastrophic damage beyond repair will not be covered. Lessor’s regular service charges shall apply if device is in need of a second outer housing replacement within twelve (12) months of previous outer housing replacement, providing device is still under this Worry-Free plan.

ON-SITE SUPPORT OPTION

15. On-site Support, including evaluation and packing of device for return to Lessor’s service depot

- On-site Support – 48–72-hour response. Includes authorized on-site device repairs for all capital equipment included in Exhibit A, evaluation, packing of device for return to Lessor’s service depot.
- In the event of a reported device malfunction, the device should be made available to the Lessor’s Field Service Engineer (“FSE”) during the scheduled visit at one of the two centrally located stations.
- A primary and back-up contact must be provided to the FSE for all communication.
- Routine service inspections will be conducted on Lessee’s site during normal working hours (8.30am – 5.30pm EST, Monday – Friday).
- Outside of normal business hours, arrangements are available by request only. Lessor reserves the right to charge additional fees for such services, to be agreed between Lessor and Lessee.

16. The postponement of a routine service inspection shall not diminish Lessee’s responsibility for the continued proper use and upkeep of the equipment, in accordance with the applicable user manuals.

17. ECG 12-lead cable replacement upon failure, excluding physical damage, one replacement per unit per year.

EXHIBIT D

Notice Information:

If to Lessor by mail to:

ZOLL Medical Corporation
269 Mill Road
Chelmsford, MA 01824-4105
Attn: Contracts Department 214

If to Lessee:

City of Chula Vista
Fire Admin
276 Fourth Street, Building C
Chula Vista, CA 91910

If to Lessor by email to both:

Contracts@zoll.com

All notices of a legal nature should also
be sent to:

By mailto:

City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista CA
91910

By email to:

CityAttorney@chulavistaca.gov

ZOLL Medical Corporation
269 Mill Road
Chelmsford, MA 01824-4105
Attn: Office of General Counsel

By email to:

LegalNotice@zoll.com

Lessee's Information:

Lessee hereby represents and warrants, as of the date of the Master Agreement and each Schedule (subject to any updates provided to Lessor):

1. The exact legal name of Lessee, as set forth in its formation documents, is City of Chula Vista.
2. Lessee is a subdivision in the State of California.
3. Lessee's federal tax identification number is: 95-6000690

EXHIBIT E

Product Name	Quantity	Sale Price	Total
Initial Equipment			
X Series Advanced	24	44,908.94	1,077,814.56
RD Rainbow SET MD20-04 EMS Patient Cable, 4ft	24	178.85	4,292.40
LNCS-II Rainbow DCI 8λ SpCO Adult Sensor, 3ft	24	566.15	13,587.60
X Series Carry Case, Premium	24	424.00	10,176.00
X Series - Worry-Free Service Plan - 5 Years On-Site At Time of Sale	24	9,355.50	224,532.00
ZOLL X Series Trade In Allowance (EMS Group)	17	(5,500.00)	(93,500.00)
AutoPulse Soft Carry Case - with battery pocket	4	482.00	1,928.00
AutoPulse® System with Pass Thru	4	10,665.15	42,660.60
AutoPulse SurePower Charger	4	2,226.15	8,904.60
AutoPulse Li-Ion Battery	12	701.25	8,415.00
AED Pro® Semi-Auto/Manual	3	2,770.35	8,311.05
AED Pro non-rechargeable lithium battery pack	3	116.80	350.40
AED Pro ECG Cable AAMI	3	116.80	350.40
CPR Stat-padz HVP Multi-Function CPR Electrodes - 1 pair	3	54.75	164.25
Pedi-padz II Pediatric Multi-Function Electrodes	3	50.42	151.26
AutoPulse Worry-Free Service Plan 4 Year	4	6,804.00	27,216.00
Residual Value of all equipment (X Advanced, AutoPulse, AED Pro)	1		(155,050.00)
Interest @ 2.5%	1		109,360.91
		Initial Equipment Total	1,289,665.03
Technology Upgrade Equipment			
X Series Advanced Monitor or Equivalent	24	58,381.62	1,401,158.93
RD Rainbow SET MD20-04 EMS Patient Cable, 4ft	24	232.51	5,580.12
LNCS-II Rainbow DCI 8λ SpCO Adult Sensor, 3ft	24	736.00	17,663.88
X Series Carry Case, Premium	24	551.20	13,228.80
X Series - Worry-Free Service Plan - 5 Years On-Site At Time of Sale	24	12,162.15	291,891.60

Discount applied in lieu of trade ins	17	(7,150.00)	(121,550.00)
AutoPulse Soft Carry Case - with battery pocket	4	626.60	2,506.40
AutoPulse® System with Pass Thru	4	13,864.70	55,458.78
AutoPulse SurePower Charger	4	2,894.00	11,575.98
AutoPulse Li-Ion Battery	12	911.63	10,939.50
AED Pro® Semi-Auto/Manual	3	3,601.46	10,804.37
AED Pro non-rechargeable lithium battery pack	3	151.84	455.52
AED Pro ECG Cable AAMI	3	151.84	455.52
CPR Stat-padz HVP Multi-Function CPR Electrodes - 1 pair	3	71.18	213.53
Pedi-padz II Pediatric Multi-Function Electrodes	3	65.55	196.64
AutoPulse Worry-Free Service Plan 4 Year	4	8,845.20	35,380.80
Residual Value of all equipment (X Advanced, AutoPulse, AED Pro)	1		(155,050.00)
Interest @ 2.5%	1		139,900.85
		Secondary Equipment Total	1,720,811.21

Total All Equipment 3,010,476.24

ZOLL One Payment Amount 301,047.63