

**STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE TERM SCHEDULE – S&LG-BASED**

THIS CONTRACT is between the STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES ("DAS"), GENERAL SERVICES DIVISION, OFFICE OF STATE PURCHASING, ON BEHALF OF THE STATE OF OHIO ("State"), with offices at 4200 Surface Road, Columbus, OH 43228 – 1395 and

ZOLL MEDICAL CORPORATION ("Contractor") with Office(s) at 269 Mill Road, Chelmsford, MA 01824

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BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State will enter into a contract with the manufacturer provided that the manufacturer offers its goods and ancillary services at the same prices that the manufacturer offers those goods and services to its distributors, or if the manufacturer has no distributors, the prices that the manufacturer offers to its similarly situated most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customer's better support through dealers that have a local presence in the service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers. But, if the Contractor is not the manufacturer of the goods or services under this contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract and any extensions to meet the State's needs under the Contract and that the Contractor is an authorized dealer in the manufacturer's goods or services. The letter must identify each product or service that the Contractor will supply under this Contract. The letter must also contain an assurance of the availability through the dealer of repair and spare parts for equipment covered by this Contract for five (5) years from the date of purchase. It must also contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a permanent license fee of less than \$5,000.00 per copy.) The manufacturer's letter must be signed by an authorized official of the manufacturer and submitted with the executed copies of this Contract.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's best pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

STANDARD TERMS & CONDITIONS

I. CONTRACT TERM PROVISIONS:

- A. APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

The current General Assembly cannot commit a future General Assembly to an expenditure. Therefore, this Contract will automatically expire at the end of the current applicable biennium. The State may renew this Contract in the next biennium by issuing written notice to the Contractor or by actions of the State of the decision to do so.

- B. OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:
1. All statutory provisions under the Ohio Revised Code, including Section 126.07, have been met.
 2. All necessary funds are made available by the appropriate state agencies.
 3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
 4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.
 - a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.
 - b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and a commercially reasonable amount of time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.
 - c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.
 - d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.
 - e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.
 - f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current

- g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.
 - h. **Termination for Failure to Retain Certification.** Pursuant to O.R.C. Section 123.151 and 123.152 of the Revised Code, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.
 - i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.
 - j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any deliverables completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.
2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

- A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages to the extent arising directly from Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services of like kind and quality, less any expenses or costs saved by Contractor's default, from Contractor.
- B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, deliverable or milestone that is the subject of the default, for every day up to 30 days, that the default is not cured by the Contractor.
- C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

- A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:
1. The purchase order number authorizing the delivery of products or services.
 2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.
- B. **PAYMENT DUE DATE.** Payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the services is delivered in accordance with the terms of this Contract. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payment will be paid in accordance with O.R.C. Section 126.30

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

- A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under O.R.C. 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.
- B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:
1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
 2. No Deliverable will infringe on the intellectual property rights of any third party.
 3. All warranties are in accordance with Contractor's standard business practices and per Contractor's warranty information attached herein as Exhibit 2.
Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:
 4. The Contractor has the right to enter into this Contract.
 5. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
 6. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
 7. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.
 8. The Contractor has the right and ability to grant the license granted in Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable amount of time or will refund the amount of the compensation paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

- C. **INDEMNITY.** The Contractor will indemnify the State for any and all third party claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to tangible property to the extent arising directly from a defect in the product or the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Ohio Attorney General's Office. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace the Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Contract; or
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

D. LIMITATION OF LIABILITY. Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, the parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. The contractor further agrees that the contractor shall be liable for all direct damages due to the fault or negligence of the contractor.

V. GENERAL PROVISIONS:

- A. AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing, and issued by DAS and agreed to by Contractor.
- B. ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the state of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the state of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.
- C. ASSIGNMENT/DELEGATION.** Neither party will assign any of its rights nor delegate any of its duties under this Contract without the written consent of the other party, which consent will not be unreasonably withheld. Any assignment or delegation not consented to may be deemed void by the opposite party.
- D. AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred dollars (\$2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than thirty (30) business days after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

- E. CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be

served by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

- F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:
1. The location(s) where all services will be performed; and
 2. The location(s) where any state data applicable to the contract will be maintained or made available; and
 3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug – free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including O.R.C. Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using the Ohio Business Gateway Electronic Filing website <http://business.ohio.gov/efiling/>. Contractor must verify compliance on an annual basis for the duration of any contract. Approved Affirmative Action Plans can be found by going to the Equal Opportunity Division's web site: <http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx>

- J. **USE OF EDGE VENDORS.** The State encourages Contractor to purchase goods and services from Encouraging Diversity, Growth, and Equity (EDGE) vendors.
- K. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.
- L. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect
- M. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.
- N. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.
- O. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.
- P. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

- Q. STRICT PERFORMANCE.** The failure of either party, at any time, to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.
- R. SUBCONTRACTING.** The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through the Department of Administrative Services, General Services Division, Office of Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.
- S. SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this contract.
- T. TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.
- U. ELECTIONS LAW.** Contractor, by signature affixed on this document, hereby certifies that all applicable parties are in full compliance with O.R.C. Section 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with O.R.C. Section 3517.13, that accepts the Contract and any purchase orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

Additional information regarding Contribution Restrictions is available on the Office of Budget & Management's website at: www.obm.ohio.gov

SPECIAL TERMS AND CONDITIONS

I. CONTRACT COMPLIANCE PROVISIONS:

- A. CONTRACT COMPLIANCE.** The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for prompt correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through the Department of Administrative Services, Office of Procurement Services, by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). The State will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).
- B. CERTIFICATION OF ACCURACY.** The Contractor hereby certifies the following:
1. The Contractor's prices under this Contract are the best prices for which it has sold each product or provided each service to any of its similarly situated most favored customers with commensurate sales volumes, terms and conditions, within the year before the date the Contractor executed this Contract and added the product or service to this Contract.

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

- C. CONTRACTOR QUARTERLY SALES REPORT.** The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales, to include both state agencies and political subdivisions, under this Contract by calendar quarter (e.g. January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the Contract user for the products and/or services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor will receive an email with a User ID and password and must report the quarterly dollar value of sales to the Department of Administrative Services (DAS) via the Internet using the web form at the Ohio DAS Contract Management Contractor Portal, <https://cm.ohio.gov/>. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period. The Contractor is responsible for emailing the Analyst listed on page one of the contract with any company contact changes.

The Contractor shall also submit a close-out report within one hundred and twenty (120) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to one of the following addresses,

For same day or overnight deliveries:

Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may suspend, terminate or cancel this Contract.

- D. CONTRACTOR REVENUE SHARE.** The Contractor must pay the Department of Administrative Services (DAS) a revenue share of the sales transacted under this contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering agencies which includes both state agencies and political subdivisions using this Contract.

The contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the Ohio Contract Management Remittance Report.

The Contractor should make the check payable to: Treasurer, State of Ohio.

Use the following address for same day or overnight deliveries:

Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:

Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner, DAS may suspend, terminate or cancel this Contract.

- E. DELIVERABLES.** Attached as Exhibit 1 is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the Contractor may not charge any other prices for these Deliverables other than the prices on the Exhibit 1. If Exhibit 1 contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached as Exhibit 1 is identified as the following commercial price list(s).
- F. INSURANCE.** The Contractor will provide the following insurance coverage at its own expense throughout the term of this Contract:
1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.
 2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than \$1,000,000.00 combined single limit, and property damage of at least \$500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carrier(s). The policy shall provide thirty (30) days notice to the State before cancellation.

G. LEASES/FINANCING. Intentionally Omitted

H. SPECIFIC CHANGES. The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock-speed. The Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not offer to the State any products that are not year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

II. PARTIES TO THE CONTRACT:

A. DEALERS. The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(s) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Purchasing.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.
4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor would indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

- B. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in O.R.C. Section 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under the agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>).

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this contract, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in O.R.C. Section 145.037.

- C. POLITICAL SUBDIVISIONS.** This Contract may be relied on by Ohio political subdivisions, including Ohio cities and counties ("Political Subdivisions"). Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision's performance, including but not limited to payment, and will hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

III. PRICING PROVISIONS:

- A. ECONOMIC PRICE ADJUSTMENT.** The State will be entitled to a price decrease any time the Contractor sells a product or a service to any similarly situated most favored customer with commensurate sales volumes, terms and conditions, for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor sells a product or provides a service to any customer for less than it is available to the State under this Contract, the Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and promptly reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar days of any general reduction in the price of any product or service covered by this Contract even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State will ask to renegotiate the price under this Contract of the goods and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.
- B. NOTIFICATION OF PRICE INCREASE.** If this Contract permits any price increases, the Contractor must notify the Department of Administrative Services, Office of State Purchasing and any affected State customers of the increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

IV. MERCHANDISE PROVISIONS:

- A. EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Deliverable, the following warranties

apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or if that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

The warranty period will be per Contractor's standard warranty set forth in Exhibit 2.

- B. PRODUCT RECALL.** The State and Contractor shall comply with the tracking provisions of Section 519(e) of the Food Drug and Cosmetics Act 21 U.S.C. § 9 and those regulations promulgated and guidance documents issued pursuant thereto, including, without limitation 21 CFR Part 821 (the "Act"). If CONTRACTOR becomes required to remove or correct the Products, or if CONTRACTOR voluntarily initiates a removal or correction of the Product(s), State shall provide CONTRACTOR the information required to be in compliance with the Act and shall promptly cooperate with and assist CONTRACTOR in locating and retrieving, if necessary, the affected Product(s) and otherwise comply with all other legal requirements in recalls of medical devices. It is the responsibility of the State to review and stay current with the Act. CONTRACTOR will bear the cost of replacing, servicing and/or updating affected Product including shipping costs as related to the recall or corrective action. State must comply with CONTRACTOR's request to locate tracked medical devices by serial number on a bi-annual basis for the purpose of FDA regulated tracking audits. If State does not respond to CONTRACTOR's request or does not have a method to track devices by serial number, then CONTRACTOR has the responsibility to notify FDA of such regulatory non-compliance.
- C. QUALITY ASSURANCE.** At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.
- D. RETURN GOODS POLICY.** The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.
1. Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense to be repaired or replaced at the Contractor's sole option. The ordering agency shall contact the Contractor to make arrangements to return goods, at the Contractor's expense, within seven (7) calendar days after notification in accordance with the Contractor's return policy found in Exhibit 3. The Contractor shall not apply any restocking or other charges to the ordering agency.
 2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor in accordance with Contractors return policy found in Exhibit 3.
 3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

V. MAINTENANCE PROVISIONS:

- A. EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order, and this will include installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance will also include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its diligent efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.
2. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

- B. EQUIPMENT MAINTENANCE CONTINUITY.** This section applies if Equipment will be a Deliverable under this Contract. If the Contractor is unable to provide maintenance services to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract.

- C. EQUIPMENT MAINTENANCE STANDARDS.** This section applies if Equipment will be a Deliverable under this Contract. Except in the case of excusable delay, a loaner unit will be provided within 24 hours of defect notification to Contractor. Loaner unit will remain with the State until the State's Equipment is returned in good working order. If a loaner unit is not shipped within twenty-four (24) hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

- D. **MAINTENANCE ACCESS (GENERAL)**. The section applies if any software or Equipment will be a Deliverable under this Contract. The State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires the Deliverable to be inoperable must be performed outside the State's customary working hours except when the Deliverable is already inoperable. Preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). This section applies if software or Equipment will be a Deliverable under this Contract. Maintenance will be available at the Contractors factory.

VI. IT PROVISIONS:

- A. **LICENSE IN COMMERCIAL MATERIAL**. As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copy able through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in Exhibit 1 or as an attachment referenced in Exhibit 1, if that scope of license is different than the scope of license contained in this section for Commercial Materials. Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the Federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the Federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, if a firmware update is made available by Contractor, it will be provided to the State at no additional charge.

- B. **SOFTWARE WARRANTY. Intentionally Omitted**
 C. **SOFTWARE MAINTENANCE. Intentionally Omitted**
 D. **UPGRADES. Intentionally Omitted**

VII. OWNERSHIP/TITLE PROVISIONS:

- A. **ACCEPTANCE**. The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to thirty (30) days after delivery to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defect have been fixed.
- B. **DELIVERIES**. All deliveries will be F.O.B. Destination. Freight Prepaid.
- C. **OWNERSHIP OF DELIVERABLES**. Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable rather than grant the State ownership of the Pre-existing Materials. The Contractor will not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

- D. **PASSAGE OF TITLE.** Title to any Deliverable will pass to the State only on delivery of the Deliverable. All risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

VIII. GENERAL PROVISIONS:

- A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of the Department of Administrative Services for a period of one month. Any further renewals will be by mutual agreement between the contractor and the Department of Administrative Services for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.
- B. **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract.
- C. **OHIO ETHICS.** Contractor represents that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Contractor further represents that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.
- D. **OHIO PAYMENT CARD.** Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed \$2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the Department of Administrative Services, Office of Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.
- E. **TRAVEL EXPENSES.** Any travel or per diem required by the Contractor to do its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in Rule 126-1-02 of the Ohio Administrative Code.
- F. **ENTIRE AGREEMENT.** This Contract consists of this document; the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and Exhibit 1. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing and agreed to by both parties.
- G. **Expenditure of Public Funds on Offshore Services.** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Offeror must complete the attached [Contractor/Subcontractor Affirmation and Disclosure form 5.2.8](#) to abide with Executive Order 2011-12K affirming no services of the Contractor or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data are maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

- H. **ORC 9.76 (B).** Pursuant to Ohio Revised Code 9.76 (B) Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

EXHIBIT 2
CONTRACTOR'S WARRANTY

AED PLUS Five-Year Limited Product Warranty

ZOLL Medical Corporation (ZOLL) warrants to the Customer that from the date of installation, or thirty (30) days after the date of shipment from ZOLL's facility, whichever first occurs, the Equipment (constituting the Defibrillator) will be free from defects in material and workmanship under normal use and service for a period of five (5) years. The Factory Warranty covers all parts, labor, shipping and insurance costs for the repair of the Equipment. A Service Loaner is provided at no charge for use during the repair.

During such five-year period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the Equipment found to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

Accessories (constituting the PASS cover and electrodes) shall be warranted for ninety (90) days from date of shipment. During such period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the accessories found by ZOLL to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

ZOLL shall not be responsible for any Equipment defect, the 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 Customer, unless such modification is made with the prior written approval of ZOLL; (ii) the use of the Equipment with any associated or complementary Equipment, accessory or software not supplied by ZOLL; (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL; or (v) installation or wiring of the Equipment other than in accordance with ZOLL's instructions.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, patient cables and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory, known as "firmware").

The foregoing warranty constitutes the exclusive remedy of the customer and the exclusive liability of ZOLL for any breach of any warranty related to the Equipment supplied hereunder.

THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL 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."

ZOLL Medical Corporation (ZOLL) warrants to the Customer that from the date of shipment from ZOLL's facility, the Equipment (constituting the Defibrillator) will be free from defects in material and workmanship under normal use and service for the period of five (5) years from the date of shipment. The Factory Warranty covers all parts, labor, shipping and insurance costs for the repair of the Equipment. A Service Loaner is provided at no charge for use during the repair.

During such five-year period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the Equipment found to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

Accessories (constituting the carry case and electrodes) shall be warranted for 90 days from date of shipment. During such period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the accessories found by ZOLL to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship; ZOLL's regular service charges shall apply.

ZOLL shall not be responsible for any Equipment defect, the 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 Customer, unless such modification is made with the prior written approval of ZOLL; (ii) the use of the Equipment with any associated or complementary Equipment, accessory or software not supplied by ZOLL (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL; or (v) installation or wiring of the Equipment other than in accordance with ZOLL's instructions.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, patient cables and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory, known as "firmware").

The foregoing warranty constitutes the exclusive remedy of the customer and the exclusive liability of ZOLL for any breach of any warranty related to the Equipment supplied hereunder.

THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE.

Monitor/Defibrillators Five-Year Factory Warranty

ZOLL Medical Corporation warrants to the Customer that from the date of shipment from ZOLL Medical Corporation's facility, the Equipment (constituting the Monitors, Monitor/Defibrillators and Battery Chargers) will be free from defects in material and workmanship under normal use and service for the period of five (5) years from the date of shipment. The Factory Warranty covers all parts, labor, shipping and insurance costs for the repair of the Equipment. A Service Loaner is provided at no charge for use during the repair.

During such period ZOLL Medical Corporation will, at no charge to the Customer, either repair or replace (at ZOLL Medical Corporation's sole option) any part of the Equipment found to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship; ZOLL Medical Corporation's regular service charges shall apply.

Accessories (constituting the cables, paddles, SpO2 sensors, single battery chargers and electrodes) shall be warranted for 90 days from date of shipment. During such period ZOLL Medical Corporation will, at no charge to the Customer, either repair or replace (at ZOLL Medical Corporation's sole option) any part of the accessories found by ZOLL Medical Corporation to be defective in material or workmanship. If ZOLL Medical Corporation's inspection detects no defects in material or workmanship; ZOLL Medical Corporation's regular service charges shall apply.

ZOLL Medical Corporation shall not be responsible for any Equipment defect, the 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 Customer, unless such modification is made with the prior written approval of ZOLL Medical Corporation; (ii) the use of the Equipment with any associated or complementary equipment, accessory or software not supplied by ZOLL Medical Corporation (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL Medical Corporation; or (v) installation or wiring of the Equipment other than in accordance with ZOLL Medical Corporation's instructions.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, patient cables and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory, known as "firmware"). The foregoing warranty constitutes the exclusive remedy of the customer and the exclusive liability of ZOLL Medical Corporation for any breach of any warranty related to the Equipment supplied hereunder.

The warranty set forth herein is exclusive and ZOLL Medical Corporation expressly disclaims all other warranties whether written, oral, implied, or statutory, including but not limited to any warranties or merchantability or fitness for a particular purpose.

AutoPulse One-Year Limited Product Warranty

ZOLL Medical Corporation (ZOLL) warrants to the Customer that from the date of shipment from ZOLL's facility, the Equipment, (constituting the AutoPulse® Resuscitation System Platform and AutoPulse Battery Charger) will be free from defects in material and workmanship under normal use, and service for a period of one (1) year from date of shipment. The AutoPulse battery is warranted for one (1) year, from the date of shipment, if maintained according to the AutoPulse Battery Management Program. AutoPulse Accessories and disposables shall be warranted for ninety (90) days from date of shipment.

During such period ZOLL will at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the Equipment found to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship, ZOLL's regular service charges shall apply. ZOLL will pay for the shipping, insurance cost and a service loaner at no charge for use during the repair.

ZOLL shall not be responsible for any Equipment defect, the 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 Customer, unless such modification is made with the prior written approval of ZOLL; (ii) the use of the Equipment with any associated or complementary Equipment, accessory or software not supplied by ZOLL; (iii) any misuse or abuse of the Equipment; (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL; or (v) installation or use of the Equipment other than in accordance with ZOLL's instructions.

This warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, processor board internal battery, LifeBand® Chest Compression Assembly and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory, known as "firmware"). The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL for any breach of any warranty related to the Equipment supplied hereunder.

THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE, AND ZOLL 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.

EXHIBIT 3
CONTRACTOR'S RETURN POLICY AND PROCEDURES

Important:

When your shipment arrives:

Please inspect all cartons and count the number of pieces that you received. Verify numbers and items against the enclosed packing slip. Any discrepancies with your shipment must be brought to our attention within 10 working days.

RETURN POLICY

The Return Authorization Number (RMA) must appear on the outside of all boxes along with a copy of the original packing slip indicating what products are being returned - failure to do so can cause a delay in processing your credit. Customer's using an RPS label must apply the return sticker to each package.

- Customer must obtain advance authorization for product returns from ZOLL. Returns received without proper authorization (RMA) will be returned to sender.
 - Only product purchased within 90 days are eligible for return except electrodes, which need to be returned within 14 days.
- Capital Equipment returns must be authorized in advance by the Sales Representative and a RMA must be obtained from the ZOLL Customer Service Department, (800) 348-9011.
- If the equipment is not working properly, contact Technical Support at (800) 348-9011 or Tservice_master@zoll.com for troubleshooting. If the problem cannot be resolved, Technical Support will issue a service request number to authorize the return.
 - Per OSHA standard on Blood Borne Pathogens (29 CFR 1910-1030) the customer is required to clean and disinfect all items returned.

How to Return a Product to ZOLL Medical Obtain an RMA by calling the ZOLL Customer Service Department at (800) 348-9011.

1. Include a copy of the original packing slip indicating what product is being returned.
2. Insure that merchandise is well packaged for return to ZOLL Medical.
3. Write the return authorization number on the outside of the package.
4. Be sure to obtain a copy of the tracking label from your package.

How to Return Trade-In Equipment to ZOLL Medical

There is already an RMA created at the time of the sale. If you do not know what that number is, please call the ZOLL Customer Service Department at (800) 348-9011.

Please follow the instructions noted above for returning product to ZOLL Medical.