

## ALS/BLS Software Solutions Master Subscription and Software License Agreement

**1. Orders.** ZOLL Medical Corporation (“ZOLL”) shall provide the Software, Deployment Services and Support Services identified in any order or contract (“**Order**”) between ZOLL and another party (“**Customer**”) incorporating this Software Solutions Master Subscription and Software License Agreement (together with each such Order, the “**Agreement**”). Software is further defined in Section 3. Deployment Services are further defined in Section 4. Support Services are further defined in Section 5. The Deployment Services and the Support Services are each, and are collectively, “**Services**”. The terms and conditions set forth in this Agreement shall only apply to ALS/BLS Software Solutions products that are used with ZOLL Medical Corporation defibrillators. For the sake of clarity, these terms and conditions do not apply to any ZOLL patient care reporting software.

**2. Payment.** Customer shall pay fees to ZOLL for Software and Services as provided in any Order and this Agreement (“**Fees**”). Unless otherwise provided in the applicable Order, Customer will pay ZOLL all Fees due under this Agreement within thirty (30) days after the date of ZOLL’s invoice. The first invoice will be sent after the Deployment Effective Date. “Deployment Date” means the date upon which the deployment of the Software is complete and it is able to function as described in the warranty set forth in this Agreement, regardless of whether Customer actually uses such Software. “Deployment Effective Date” means the earlier of (a) the Deployment Date or (b) 90 days from the date after ZOLL’s shipment of defibrillators that are included on the Order (the “Latest Deployment Date”), unless a delay in the Deployment Date has been caused by ZOLL, in which case the Deployment Effective Date shall be postponed by a number of days equal to the delay that ZOLL has caused. Fees are non-refundable other than as expressly set forth herein. Amounts not paid when due will accrue interest at the rate of 1.5% per month, or the maximum allowed by law, whichever is less. Customer shall pay all expenses (including reasonable attorney’s fees) incurred by ZOLL in connection with collection of late payments. Any amounts not paid by Customer when due may result in the forfeiture by Customer, in ZOLL’s sole discretion, of any discounts previously offered by ZOLL. In addition, ZOLL may cease providing any or all of the Software and Services if any invoice is not paid in a timely manner, in which event ZOLL will not be liable to Customer for any damages caused by such cessation. Payment terms are subject to ZOLL’s credit approval. Fees exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (“**Taxes**”).

**3. Software.** “Software” means any computer software program identified in an Order, on and after the Deployment Date (defined below) for such program and before that Order has expired or been terminated in accordance with the Agreement, Customer acknowledges that the Software is only compatible with equipment that has been enabled and configured for use with the Software in accordance with the Documentation (defined below).

**3.1. Delivery.** ZOLL shall deliver the Software via download or to the address for the delivery specified in the Order for such Software. All shipments will be F.O.B. point of shipment. Risk of loss passes to Customer upon shipment.

**3.2. License.** Subject to the terms and conditions of this Agreement, ZOLL grants to Customer a limited, non-exclusive, non-transferable license to: (a) install and use the Software, including any updated or enhanced version that ZOLL may provide pursuant to the Support Services, in Executable Code (defined below) on an unlimited number of compatible personal computers or servers for use concurrently by an unlimited number of Customer users with respect to the limited quantity of monitor/defibrillators specified in any Order for Customer’s internal business purposes; (b) make one copy of the Software solely for backup or archival purposes; and (c) copy and reproduce the user’s manuals provided to Customer along with the Software (the “**Documentation**”) provided to Customer solely for the purposes of facilitating Customer’s use of the Software.

**3.3. Restrictions.** Except as expressly permitted by the Agreement, Customer shall not, and shall not permit any third party, to: (a) use, reproduce, modify, adapt, alter, translate or create derivative works from the Software or the Documentation; (b) merge the Software with other software; (c) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer the Software or the Documentation to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code (defined below) for the Software; (e) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the Software; or (f) otherwise use or copy the Software or Documentation in any manner not permitted by the Agreement. Customer agrees to install and use the Software only in strict compliance with the terms of this Agreement. Without limiting the generality of the foregoing, Customer covenants to comply with all limitations with respect to the number of monitor/defibrillators with respect to which Customer may install the Software hereunder. Customer may not install or use the Software in a manner that circumvents or interferes with the operation of any technological measure that regulates software use or controls access to the Software. Notwithstanding anything to the contrary in the Agreement, ZOLL may cease providing any Software and Support Services therefor upon at least six months’ advance notice to Customer.

## **4. Deployment Services.**

**4.1. ZOLL and Customer Obligations.** ZOLL shall provide the installation, project management, training and other services for Software deployment identified in an Order (the “**Deployment Services**”). Customer shall, in a timely manner and at its own expense, cooperate and provide or make available to ZOLL access to the Customer’s premises, systems, telephone, terminals and facsimile machines and all relevant information, documentation and staff reasonably required by ZOLL to enable ZOLL to perform the Deployment Services. ZOLL may suspend its obligations during such period that such conditions of access are not maintained and Customer agrees to reimburse ZOLL for any reasonable costs incurred as a result of such suspension at its then current time and materials rates. To the extent that ZOLL is performing work in accordance with specifications provided by Customer, Customer shall be solely responsible for compliance with all laws and regulations.

## **4.2. Extension of Time.**

**4.2.1. Delay.** Customer acknowledges that time frames and dates for completion of the Deployment Services as set out in the Order are estimates only and the ability to meet them is influenced by a range of factors including: (a) the developing nature of the scope of work; (b) the performance of third party contractors involved in the process; (c) the contribution of resources by the Customer; and (d) times of response by and level of cooperation of Customer. Obligations as to time are therefore on a “reasonable efforts” basis only and ZOLL shall not be liable for failure to meet time frames or completion dates unless solely due to the negligence of ZOLL, and ZOLL’s liability will be limited to the Fees paid for the deficient Deployment Services. If Customer postpones or cancels a scheduled installation with less than thirty (30) days’ notice to ZOLL, or requests a change in the timing or duration of the Deployment Services with less than thirty (30) days’ notice to ZOLL, then ZOLL may charge, and Customer shall pay, any additional costs incurred by ZOLL as a result.

**4.2.2. Changes.** Customer understands that ZOLL’s performance is dependent in part on Customer’s actions. Accordingly, any dates or time periods relevant to performance by ZOLL hereunder will be appropriately and equitably extended to account for any delays due to Customer’s acts or omissions. If either party proposes in writing a change to the scope, timing, or duration of the Deployment Services, the other party will reasonably and in good faith consider and discuss with the proposing party the proposed change and a revised estimate of the costs for such change.

**5. Support Services.** ZOLL shall provide the following Support Services for Software without any additional Fees, except that ZOLL will have no obligation to provide such Support Services if any Fees for Software or Deployment Services are past due.

## **5.1. Support.**

**5.1.1. Emergency Support.** ZOLL shall provide telephone support to Customer for 24 hours a day, 7 days a week, to address Errors that prevent Customer from using Supported Software for a purpose for which Customer has an immediate and material need. “**Supported Software**” means the current version of Software for which Customer has paid the then-current Fees. “**Supported Environment**” means the hardware and operating system platform that ZOLL supports for use with the Supported Software. “**Error**” means a reproducible defect in Supported Software when operated in accordance with the Documentation in a Supported Environment that causes the Supported Software not to operate substantially in accordance with such Documentation.

**5.1.2. Technical Support.** ZOLL shall provide telephone support to Customer during 8 a.m. to 6 p.m. Eastern Time, Monday to Friday, excluding ZOLL holidays (“**Business Hours**”) to address all other Errors relating to any Supported Software licensed by Customer. Such telephone support will include (i) clarification of functions and features of the Supported Software; (ii) clarification of the Documentation; (iii) guidance in operation of the Supported Software; (iv) assistance in identifying and verifying the causes of suspected Errors in the Supported Software; and (v) advice on bypassing identified Errors in the Supported Software, if reasonably possible. Responses to such reporting shall be provided at a minimum within twenty-four (24) hours during Business Hours.

**5.1.3. Resolution.** ZOLL shall use commercially reasonable efforts to provide a modification or workaround to Supported Software that resolves an Error in all material respects (“**Resolution**”).

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

**5.1.5. Exceptions.** ZOLL shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Supported Software (in whole or in part), (b) use of the Supported Software 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 ZOLL; excessive heating; fire and smoke damage; operation of the Supported Software with other media and hardware, software or telecommunication interfaces; or causes other than ordinary use. Any corrections performed by ZOLL for such Errors shall be made, in ZOLL’s reasonable discretion, at ZOLL’s then-current time and material charges. ZOLL will provide the Support Services only for the most current release and the one immediately preceding major release of any Software. Notwithstanding anything to the contrary in the Agreement, (i) ZOLL may cease providing Support Services for any Software upon at least six (6) months advance notice to Customer of such cessation and (ii) Support Services do not cover Third Party Products or Services (defined below).

**5.2. Updates.** ZOLL may provide to Customer subsequent releases for any Supported Software as and when developed for general release, in ZOLL’s sole discretion, that ZOLL generally makes available for licensees of such Software, for no additional license fee other than shipping and handling charges (“**Updates**”), provided Customer has paid the Fees for such Supported Software for the relevant time period. Updates do not include any release, option of future Software that ZOLL licenses separately. Customer will be solely responsible for the installation of any Update for any Supported Software licensed by Customer in accordance with the Documentation and the installation instructions provided by ZOLL to Customer for such Update. If Customer requests that ZOLL install any such Update, such Services shall be subject to a new Order executed by the parties. If any Order for Software is terminated by ZOLL for a material default or Customer without cause (the “**Discontinuance**”), and Customer subsequently elects to enter into an Order for such Software to which ZOLL agrees (the “**Reinstatement**”), then Customer must pay the Fees for such Software applicable to the time period between Discontinuance and Reinstatement.

**5.3. Conditions and Limitations.** Customer shall provide ZOLL with access to Customer’s personnel and its equipment. This access must include the ability to remotely access the equipment on which the Supported Software are operating and to obtain the same access to the equipment as those of Customer’s employees having the highest privilege or clearance level. ZOLL will inform Customer of the specifications of the remote access methods available and associated software needed, and Customer 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.

## **6. Warranties.**

**6.1. Services.** Subject to Customer’s payment of the Fees, ZOLL warrants that any Services provided to Customer will be performed with due care in a professional and workmanlike manner. ZOLL shall, as its sole obligation and Customer’s sole and exclusive remedy for any breach of the warranty set forth in this [Section 6.1](#), perform again the Services that gave rise to the breach or, in the case of Deployment Services, at ZOLL’s option, refund the Fees for such Deployment Services paid by Customer for the Deployment Services which gave rise to the breach. The availability of any remedy for a breach of the warranty set forth in this [Section 6.1](#) is conditioned upon Customer notifying ZOLL in writing of such breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

**6.2. Software.** Subject to Customer’s payment of the Fees, ZOLL warrants with respect to any Software that such Software, when installed by ZOLL and used as permitted and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation. ZOLL does not warrant that the Customer’s use of the Software will be error free or uninterrupted. ZOLL will, at its own expense and as its sole obligation and Customer’s exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to ZOLL by Customer in writing prior to the expiration or termination of the Order for such Software. Any such error correction provided to Customer will not extend the term of such Order. This [Section 6.2](#) sets forth Customer’s exclusive remedy, and ZOLL’s entire liability, for breach of the warranty for the Software contained herein.

**6.3. Warranty Disclaimers.** The warranties for the Software and Services are solely and expressly as set forth in [Section 6.1](#) and [Section 6.2](#) and are expressly qualified, in their entirety, by this [Section 6.3](#). EXCEPT AS EXPRESSLY SET FORTH IN [SECTION 6.1](#) AND [SECTION 6.2](#), (A) THE SOFTWARE AND SERVICES ARE PROVIDED STRICTLY “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, WRITTEN OR ORAL; (B) ZOLL 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) ZOLL 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 AGREEMENT, AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL’S LICENSORS OR SUPPLIERS WITH RESPECT TO THIRD PARTY PRODUCTS OR SERVICES. Customer acknowledges and agrees that, in entering into this Agreement, it has not relied upon the future availability of any new or enhanced feature or functionality, or any new or enhanced Software or service, including, without limitation, updates or upgrades to ZOLL’s existing products and services. ZOLL’s performance obligations hereunder are limited to those expressly enumerated herein, and payment for ZOLL’s performance obligations shall be due as described herein.

**7. 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 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 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 Software and Documentation shall be ZOLL’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 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.

## **8. Indemnification.**

**8.1. By ZOLL.** ZOLL will defend, at its own expense, any action against Customer or its or any of its agents, officers, director, or employees (“**Customer Parties**”) brought by a third party alleging that any Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, and ZOLL will pay those costs and damages finally awarded against the Customer 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 Customer: (a) notifying ZOLL promptly in writing of such claim or action; (b) giving ZOLL sole control of the defense thereof and any related settlement negotiations; and (c) cooperating with ZOLL and, at ZOLL’s request and expense, assisting in such defense. If any of the Software becomes, or in ZOLL’s opinion is likely to become, the subject of an infringement claim, ZOLL may, at its sole option and expense,

either: (i) procure for Customer the right to continue using it; (ii) modify it, or replace it with a substantially similar Software or service so that it becomes non-infringing; (iii) require its return and refund Customer a pro-rata portion of the Fees for such Software based on a 36-month straight-line depreciation or (iv) terminate this Agreement, in whole or in part. Notwithstanding the foregoing, ZOLL will have no obligation under this [Section 8.1](#) or otherwise with respect to any infringement claim based upon: (1) use of any of the Software not in accordance with this Agreement; (2) any use of any Software in combination with equipment, software, services or data not supplied by ZOLL if such infringement would have been avoided but for the combination with other equipment, software, services or data; (3) the failure of Customer to implement any replacements, corrections or modifications made available by ZOLL for any Software including, but not limited to, any use of any release of the Software other than the most current release made commercially available by ZOLL; or (4) any modification of any Software or use thereof by any person other than ZOLL or its authorized agents or subcontractors. This [Section 8](#) states ZOLL's entire liability and the exclusive remedy for any claims of infringement.

**8.2. By Customer.** Customer shall indemnify, defend and hold ZOLL and its agents, officers, directors and employees (the "**ZOLL 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 Agreement by the ZOLL Parties: (i) information provided to any of the ZOLL Parties by any of the Customer Parties; (ii) any of the Customer Parties' use or misuse of any of the Software, including without limitation in combination with Customer's software or services or third party Software or services; (iii) any modifications made by any of the Customer Parties to any of the Software; (iv) infringement by any of the Customer Parties of any third party intellectual property right; (v) Taxes (other than taxes based on ZOLL'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 Customer; and (vi) 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, by any of the Customer Parties.

**9. Limitation of Liability.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL ZOLL 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 ZOLL OR WITH RESPECT TO ANY MODIFICATIONS MADE TO THE SOFTWARE OR MISUSE OF THE SOFTWARE. ZOLL'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID TO ZOLL BY CUSTOMER FOR THE SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability. Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. The remedies in this Agreement are Customer's sole and exclusive remedies. In addition, ZOLL disclaims all liability of any kind of ZOLL's licensors and suppliers, for third party products or services, and for the actions or omissions of Customer's representatives.

**10. 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 ZOLL (or, as the case may be, its subsidiaries, licensors and suppliers): (i) Software, Documentation, and all proprietary technology used by ZOLL to perform its obligations under this Agreement; (ii) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that ZOLL 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 "**ZOLL Property**"). If any derivative work is created by Customer from the Software, ZOLL shall own all right, title and interest in and to such derivative work. Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

## **11. Term and Termination.**

**11.1. Term.** The term of this Agreement ("**Term**") begins on the effective date of the first Order incorporating this Agreement and continues until it is terminated. The term of each Order begins on the effective date of such Order and continues until it expires or is terminated; *provided, however*, that such term (and any extension thereof) shall automatically renew for an equivalent period at ZOLL's then current list pricing unless either party notifies the other party in writing of an intent to not renew such term at least ninety (90) days prior to the expiration of such term. "**Deployment Date**" for any Software means the earlier of (a) the date upon which the deployment of such Software is complete and such Software is able to function as described in the warranty for such Software, regardless of whether Customer uses such Software or (b) one hundred eighty (180) days following the shipment of the monitor/defibrillators in connection with which such Software is to be used, unless a delay in the deployment of such Software is caused by ZOLL, in which case the Deployment Date shall be postponed by a number of days equal to the delay that ZOLL has caused; or (c) if Customer does not use Deployment Services to deploy such Software, the date of the Order for such Software.

**11.2. Termination.** Either party may terminate this Agreement or any Order without cause on thirty (30) days' prior written notice to the other party. Either party may terminate this Agreement or any Order 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.

**11.3. Effects of Termination.** Upon expiration or termination of this Agreement or any Order for any reason: (a) all amounts, if any, owed to ZOLL under this Agreement or the Order that has expired or been terminated (the "**Expired or Terminated Document**") before such termination or expiration will become immediately due and payable; (b) Customer's right to access the Software, and all licensed rights granted, in the Expired or Terminated Document will immediately terminate and cease to exist; and (c) Customer must (i) promptly discontinue all use of any Software provided under the Expired or Terminated Document (ii) erase all copies of Software from Customer's computers and the computers of its customers and return to ZOLL or destroy all copies of such Software and related Documentation on tangible media in Customer's possession and (iii) return or destroy all copies of the Documentation in Customer'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. Additionally, if any Order for Software is terminated by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal to the amount of (x) the Fees for such Software otherwise payable during the initial term of such Order had such Order not been terminated during such term minus (y) the sum of such Fees paid by Customer to ZOLL prior to the date of termination. Upon ZOLL's request, Customer will provide a written certification (in a form acceptable to ZOLL), certifying as to Customer's compliance with its post-termination obligations set forth in this [Section 11.3](#).

## **12. General Provisions.**

**12.1. Compliance with Laws.** Customer shall comply with all applicable laws and regulations, and obtain required authorizations, concerning its use of the Software, including without limitation if applicable all export and import control laws and regulations. Customer will not use any Software for any purpose in violation of any applicable laws. ZOLL may suspend performance if Customer violated applicable laws or regulations.

**12.2. Audits and Inspections.** Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the Software is being used strictly in accordance with the terms and conditions of this Agreement. During the Term and for a period of six months following the termination or expiration of this Agreement, upon prior written notice, ZOLL will have the right, during normal business hours, to inspect, or have an independent audit firm inspect, Customer's records relating to Customer's use of the Software to ensure it is in compliance with the terms of this Agreement. The costs of the audit will be paid by ZOLL, unless the audit reveals that Customer's underpayment of Fees exceeds five percent. Customer will promptly pay to ZOLL any amounts shown by any such audit to be owing (which shall be calculated at ZOLL's standard, non-discounted rates) plus interest as provided in [Section 2](#) above.

**12.3. Assignments.** Customer may not assign or transfer, by operation of law or otherwise (including in connection with a sale of substantially all assets or equity, merger or other change in control transaction), any of its rights under this Agreement or any Order to any third party without ZOLL's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement or any Order to any affiliate, or to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, and to contract with any third party to provide part of any of the Software and Services, and to delegate performance of this Agreement or any Order to any of its subsidiaries.

**12.4. U.S. Government End Users.** If Customer 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).

**12.5. Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in the most recent Order (or to such other address or person as from time to time provided by such party in accordance with this [Section 12.5](#)), and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

**12.6. Governing Law and Venue; Waiver of Jury Trial.** This 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 Agreement. Any action or proceeding arising from or relating to this 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.

**12.7. Remedies.** Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software is built on valuable trade secrets and proprietary information of ZOLL, that any actual or threatened breach hereof will constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that ZOLL will be entitled to injunctive relief for such breach or threatened breach. Customer 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 ZOLL.

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

**12.9. Severability.** If any provision of this 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 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 Agreement, and this 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.

**12.10. Independent Contractors.** The parties are entering into, and will perform, this Agreement as independent contractors. Nothing in this 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.

**12.11. Third Parties.** Customer is solely responsible for, and none of the fees set forth herein shall be deemed to cover, any amounts owed to third parties in connection with the use of the Software. If Customer 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 Software ("**Third Party Products or Services**"), Customer represents, warrants and agrees that: (i) ZOLL shall have no liability, and makes no representation, with respect to such Third Party Products or Services; and (ii) the Third Party Provider shall not be an agent of ZOLL. To the extent the Software contains software owned by a third party for which ZOLL has a license agreement with a third party, the Software and all rights granted hereunder are expressly limited by and subject to any license agreements ZOLL may have for such software.

**12.12. Force Majeure.** Neither party shall be liable for damages for any delay or failure of performance hereunder (other than payment obligation) 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 Customer that interferes with or impedes ZOLL's performance hereunder, acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.

**12.13. Entire Agreement; Amendment; No Third Party Beneficiaries; Survival.** This Agreement, which may be accepted by performance, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Any other representation or agreement, whether written or oral, including but not limited to any purchase order issued by Customer, shall be wholly inapplicable to the Software and Services and shall not be binding in any way on ZOLL. This 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 Customer but not signed by an authorized representative of ZOLL shall have no force or effect. There are no third party beneficiaries of this Agreement. Those provisions of this Agreement that may be reasonably interpreted as surviving termination of this Agreement or the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the termination hereof including, but not limited to, [Section 7](#) (Confidentiality), [Section 8](#) (Indemnification), [Section 9](#) (Limitation on Liability), [Section 10](#) (Ownership), [Section 11.3](#) (Effects of Termination) and [Section 12](#) (General Provisions). This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.