

ZOLL Medical Corporation
APPLICATION SERVICE PROVIDER AGREEMENT

THIS APPLICATION SERVICE PROVIDER AGREEMENT (“Agreement”) is made as of November 1, 2012 (the **“Effective Date”**), by and between ZOLL Medical Corp., a Massachusetts corporation with offices at 269 Mill Road, Chelmsford, MA 01824 (**“ZOLL”**) and the party identified below (the **“Customer”**).

		<u>Customer Administrator Info (to be completed by customer)</u>	
Customer Name:	El Dorado County Health and Human Services Agency	Name:	Richard Todd
Attn. To:	Richard Todd, EMS Agency Administrator	Title:	EMS Agency Administrator
Address:	415 Placerville Drive, Suite J Placerville, CA 95667	Phone:	(530) 621-6505
Sales Rep:	Kim Wood	Email:	Richard.Todd@edcgov.us

ZOLL provides a 12 lead receiving report service known as the RescueNet 12-Lead (the **“Services”**). Client wishes to obtain the right to access the Services. Subject to the terms of this Agreement, ZOLL is willing to provide Customer with the right to access the Services.

This Agreement consists of this page and the attached Terms and Conditions, each of which are incorporated in and made a part of this Agreement. This Agreement supersedes any and all oral or written agreements or understandings between the parties, as to the subject matter of the Agreement. Capitalized terms used in this Agreement will have the meanings given to them in this Agreement. Any capitalized terms not defined in this Agreement will have their plain English (US) meanings. This Agreement may be changed or modified only by a writing signed by both parties. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. This Agreement may be executed in one or more counterparts, duplicate originals, or facsimile versions, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Item	Description	Qty.	
8700-010001-01	RescueNet 12-Lead Service	1	No Charge

By signing below, each party agrees to be legally bound by the Terms of this Agreement (Including the Terms & Conditions) as of the Effective Date.

ZOLL Medical Corporation

County of El Dorado

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: John R. Knight
Title: Chair, Board of Supervisors
Date: _____

APPLICATION SERVICE PROVIDER AGREEMENT**Terms and Conditions**

- 1. TERM.** This Agreement will begin on the Effective Date and continue until terminated per section 7 below.
- 2. SERVICES.** This Agreement is a services agreement and is not intended to provide licenses or other rights in or to any software, hardware, technology or systems used by or on behalf of ZOLL to provide the Services (the "System"). Subject to the terms of this Agreement, ZOLL will use commercially reasonable efforts to provide access to the Services to Customer in accordance with the specifications for the Services published by ZOLL. Upon request by Customer, ZOLL may agree to provide additional services to Customer in connection with the Services. All additional services will be provided at ZOLL's then-current rates for those services, unless otherwise agreed in writing by the parties and will be considered part of the "Services" for purposes of this Agreement.
- 3. ACCESS AND SECURITY.** Customer may access the Services solely for Customer's own internal business purposes. Customer agrees to notify ZOLL immediately of any actual or suspected unauthorized use of the Services. Customer agrees not to provide access to the Services other than to Customer's own employees and authorized users. Customer may not sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer Customer's right to access the Services to any third party. Customer will ensure the security and confidentiality of all passwords and other identifiers for use in accessing the Services ("Identifiers"). Customer will be responsible for all transactions and other activities conducted through the Services using any Identifiers furnished to or generated by Customer, and any such transactions will be deemed to have been completed by Customer.
- 4. LIMITATIONS.** Subject to the terms of this Agreement, Customer may access and use the Services as set forth in this Agreement for Customer's own internal business purposes. Customer will not and will not permit any third party to: (a) use the Services or System in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Services; (b) use automated scripts to collect information from, or otherwise interact with, the Services; (c) use the Services to intimidate or harass any persons or entities; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or method of operation of the System or Services; (e) remove, bypass or circumvent any electronic protection measures on the System or Services; (f) remove, alter, or obscure any copyright or other proprietary rights notices included on the System or Services; or (g) upload to the Services, or otherwise provide to ZOLL any code or device capable of or intended to interrupt, harm or damage the Services or the operation of the Services.
- 5. ADDITIONAL CUSTOMER OBLIGATIONS.** Customer will cooperate with ZOLL and otherwise comply with the obligations stated by ZOLL, including, without limitation, all reasonable requests of ZOLL for data, information, materials, and assistance to assist ZOLL in the performance of the Services. Customer will designate a contact person (and one or more backup contact persons) to be primarily responsible for coordination of the Services with ZOLL.
- 6. CONTENT.** Except for any data, information or other content ("Content") included on or made accessible through the Services by ZOLL ("ZOLL Content"), Customer will be solely responsible for all Content provided by or on behalf of Customer through the Services ("Customer Content"), including, without limitation, all Content included by or on behalf of Customer in any patient records. Customer grants to ZOLL all rights and licenses in and to such Content necessary for ZOLL to provide the Services. Customer will not provide Content that: (a) is libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; (b) infringes, misappropriates or otherwise violates any intellectual property rights or rights of publicity or privacy; (c) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate the Services, System or any data or information; (d) violates any law, rule or regulation, or suggests, encourages or intends to incite any conduct that is illegal in any way or that advocates illegal activity; or (e) is materially false, misleading or inaccurate. ZOLL may take remedial action if Content violates this Section 6, however, ZOLL has no obligation, and takes no responsibility, to review Content for accuracy or potential liability. ZOLL will use commercially reasonable efforts to maintain back-up copies of patient records during the term of this Agreement. ZOLL's obligation will not extend beyond the term of this Agreement.
- 7. TERMINATION AND SUSPENSION.** Either party may terminate this Agreement for convenience by providing the other party 90 days prior written notice. Either party may terminate this Agreement if the other party materially breaches this Agreement and does not cure such material breach within 15 days after receiving written notice thereof from the non-breaching party. ZOLL may suspend the Services (or any portion thereof) upon notice to Customer in the case of any breach or threatened breach by Customer. Upon termination of this Agreement for any reason: (1) ZOLL may cease all Services; and (2) upon the request of Customer, ZOLL will provide Customer with a single copy of all Customer Content included by Customer in any 12-Leads existing on the System as of the effective date of termination in PDF format (copies in non-PDF format will be made available upon the request of Customer at ZOLL's then-current rates). Sections 7, 9, 10.2, 12, 13, 14, and 15 will survive expiration or termination of this Agreement for any reason.
- 8. OWNERSHIP.** ZOLL will retain all right, title and interest in and to the Services, System and ZOLL Content, any updates, upgrades, enhancements, modifications, improvements and translations thereto or thereof, and all worldwide intellectual property and proprietary rights therein and relating thereto, including, without limitation, all patents, copyrights, trade secrets, trademarks, service marks and any other intellectual property, proprietary, and sui generis rights ("IPR"). As between ZOLL and Customer, without limiting the rights (if any) of any patient to the Content included in any 12-Lead, Customer will retain all right, title and interest in and to all Content included by Customer in any 12-Lead created by Customer through the Services and all IPR therein and relating thereto.

APPLICATION SERVICE PROVIDER AGREEMENT**9. MINIMUM SERVICE LEVEL AND DISCLAIMER.**

9.1 "Minimum Service Level" Subject to the terms of this Agreement, ZOLL will make the Services available for access by Customer as described in this Agreement an average of 99.9% of the time (the "Minimum Service Level"). If during any 30 day period, ZOLL fails to meet the Minimum Service Level, then Customer's sole and exclusive remedy will be the right to terminate the Agreement if the failure is not corrected within 10 days following notice of the failure by Customer. The following items are excluded from the computation of Minimum Service Level: (a) downtimes caused by scheduled maintenance; (b) Customer-caused outages or disruptions; (c) failures of interconnections to or from, and connectivity within, the Internet; (d) failures due to third party services, software or systems; and (e) other events, actions or failures otherwise disclaimed or excluded under this Agreement.

9.2 "Telephone Support"

(a) **Emergency Support.** ZOLL will provide telephone support to the Designated Interface during the Emergency Support Hours to address Errors that prevent Customer from using the Supported Programs for a purpose for which the user has an immediate need (e.g., Failure to transmit or receive a 12-Lead constitutes such an error, while failure to connect to the server to add/modify a distribution list is not such an error, as there is a work around, manually distributing the 12-Lead.).

(b) **Technical Support.** ZOLL will provide telephone support to the Designated Interface during the Business Hours to address all other Errors relating to software. Such telephone support will include the following:

- (i) Clarification of functions and features of the Supported Program;
- (ii) Clarification of the Documentation;
- (iii) Guidance in operation of the Supported Program;
- (iv) Assistance in identifying and verifying the causes of suspected Errors in the Supported Program; and
- (v) Advice on bypassing identified Errors in the Supported Program, if reasonably possible.

ZOLL shall use commercially reasonable efforts to provide a Resolution to the Supported Program. ZOLL will acknowledge each Customer report of an Error by written acknowledgment, in electronic form, setting forth a Service Request number (SR#) for use by Customer and ZOLL in all correspondence relating to such Error to track the Error until it is resolved.

9.3 "Disclaimer" EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED AND MADE AVAILABLE "AS IS" AND ON AN "AS AVAILABLE" BASIS. ZOLL MAKES NO REPRESENTATIONS OR WARRANTIES (WRITTEN OR ORAL) UNDER THIS AGREEMENT, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ZOLL WILL NOT BE RESPONSIBLE FOR, AND HEREBY DISCLAIMS ALL LIABILITY IN CONNECTION WITH, ANY INTERRUPTIONS OR DISRUPTIONS IN ACCESS TO THE SERVICES OR THE SYSTEM, OR THE FLOW OF DATA TO OR FROM THE SYSTEM AND OTHER PORTIONS OF THE INTERNET OR ANY THIRD PARTY SERVICE PROVIDER. ZOLL DOES NOT WARRANT THAT THE ACCESS TO THE SERVICES OR SYSTEM WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, SECURE, OR VIRUS-FREE. ZOLL WILL NOT HAVE ANY LIABILITY FOR THE ACCURACY, COMPLETENESS, OR TIMELINESS OF CONTENT STORED ON THE SERVICES OR SYSTEM OR PROVIDED THROUGH THE SERVICES OR FOR ANY DECISION MADE OR ACTION TAKEN BY CUSTOMER IN RELIANCE UPON ANY SUCH CONTENT.

10. INFRINGEMENT CLAIMS. ZOLL will defend at its own expense any action against Customer brought by a third party claiming that the Service infringes any third party U.S. patents or registered copyrights issued as of the Effective Date, or misappropriates any third party trade secrets, and ZOLL will pay those costs and damages finally awarded against Customer 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: (1) notifying ZOLL promptly in writing of such action; (2) giving ZOLL sole control of the defense thereof and any related settlement negotiations; and (3) cooperating and, at ZOLL's request and expense, assisting in such defense. If the Service becomes, or in ZOLL's opinion is likely to become, the subject of a claim covered by this Section 10, ZOLL may, at its option and expense, either: (a) procure for Customer the right to continue using the Service; (b) replace or modify the Service so that it becomes non-infringing; or (c) terminate this Agreement, in whole or in part, as appropriate.

Notwithstanding the foregoing, ZOLL will have no obligation under this Section 10 or otherwise with respect to any infringement claim based upon:

- (i) any use of the Service not in accordance with this Agreement; (ii) any use of the Service in combination with products, equipment, software, or data not supplied by ZOLL if such infringement would have been avoided but for the combination with other products, equipment, software or data; (iii) any use of any release of the Service other than the most current release made commercially available by ZOLL; or (iv) any modification of the Service by any person other than ZOLL or its authorized agents or subcontractors. This Section 10 states ZOLL's entire liability and the Customer's exclusive remedy for any claims of infringement.

APPLICATION SERVICE PROVIDER AGREEMENT

11. INDEMNIFICATION. Customer will indemnify, defend, and hold harmless ZOLL, and its subsidiaries, affiliates and subcontractors, and their owners, officers, directors, employees and agents (collectively, the "ZOLL Indemnitees") from and against any and all direct and indirect losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any: (1) use of the System; (2) actual or alleged breach by Customer of any provision of this Agreement; (3) negligence or willful misconduct of Customer; or (4) damage to property or injury to or death of any person directly or indirectly caused by Customer or Customer's use of the System. ZOLL will provide Customer with notice of any such claim or allegation, and ZOLL has the right to participate in the defense of any such claim at its expense.

12. LIMITATION OF LIABILITY. IN NO EVENT: (A) WILL ZOLL'S AGGREGATE LIABILITY RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID TO ZOLL BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE FOR SERVICES PROVIDED UNDER THIS AGREEMENT. IN NO EVENT WILL ZOLL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA, OR LOST PROFITS OR REVENUE, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY CONTENT OR OF THE SERVICES, EVEN IF ZOLL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

13. CONFIDENTIALITY.

13.1 "Confidential Information" Each party (the "Disclosing Party") may from time to time disclose to the other party (the "Recipient") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning, and other confidential or proprietary information that is marked or identified as confidential, or disclosed under circumstances that would lead a reasonable person to believe such information is confidential ("Confidential Information"). The Services and System, including without limitation any routines, subroutines, directories, tools, programs, or any other technology included therein, shall be considered ZOLL's Confidential Information. The Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Recipient 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 Recipient's duty hereunder. The Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

13.2 "Exceptions" The Recipient's obligations under this Section 14 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Recipient at the time of disclosure by the Disclosing Party; (b) was disclosed to the Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Recipient has become, generally available to the public; or (d) was independently developed by the Recipient without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Recipient to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body; provided that the Recipient notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

13.3 "Authority to Disclose Confidential Information." Prior to making any disclosure to ZOLL of private patient information, Customer represents that it has obtained, in accordance with federal, state and local laws relating to the privacy of patient health information, including but not limited to the Health Insurance and Portability and Accountability Act of 1996 and regulations, and guidelines related thereto, a properly executed, written authorization from each of its patients or the patients' authorized representatives documenting the patients' express written consent to enable the disclosure by Customer to ZOLL of protected health information.

14. DATA PRIVACY. ZOLL agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (PL 104-191) and the regulations promulgated thereunder ("HIPAA") in the performance of the Services. If, due to the nature of the Services, the parties determine that ZOLL is acting as Customer's business associate under HIPAA or is otherwise required to enter into a business associate agreement under HIPAA, ZOLL agrees to enter into a HIPAA business associate agreement in a form acceptable to both parties. ZOLL agrees not to use or further disclose any Protected Health Information (as such term is defined in HIPAA) in violation of HIPAA or of this Agreement, provided that ZOLL may collect, extract, compile, synthesize, and analyze non-personally identifiable data or information resulting from the use and operation of the Services under this Agreement in an aggregated form without directly identifying Customer or any other individual or entity as the source thereof. To the extent any such data or information is collected or generated by ZOLL, the data and information will be solely owned by ZOLL and may be used by ZOLL for any lawful business purpose without a duty of accounting to Customer.

APPLICATION SERVICE PROVIDER AGREEMENT

15. ADDITIONAL TERMS.

15.1 "Relationship" ZOLL and Customer are acting solely as independent contractors, and neither party is an agent or partner of the other. Nothing in this Agreement will be deemed to constitute a partnership, joint venture, or employer/employee relationship between the parties. Neither party will hold itself out as having any authority to enter into any contract or create any obligation or liability on behalf of or binding upon the other party.

15.2 "Subcontractors" Customer acknowledges and agrees that some or all of ZOLL's obligations hereunder will be provided by one or more third party service providers selected from time to time by ZOLL.

15.3 "Notices" Communications and notices required or permitted under this Agreement will be deemed delivered when hand-delivered to the receiving person, or when mailed, certified mail, return receipt requested, in first class U.S. mail, to the addresses specified on the initial page of this Agreement, or when faxed to the fax number or electronically transmitted to the Internet address specified, with hard copy mailed within 3 days thereafter in the manner set forth above. Any party may change its address for purposes of this notice provision by giving notice in the manner prescribed above.

15.4 "Force Majeure" ZOLL will not be liable to Customer or otherwise under this Agreement for delays or failures in performance under this Agreement due in any way to any failure by Customer to perform its obligations under this Agreement in a timely manner or otherwise comply with the terms of this Agreement or to causes beyond ZOLL's reasonable control, including, without limitation, labor disputes, acts of God, shortages, telecommunications failures or errors, actions or inactions of suppliers or service providers, fire, earthquake, flood, or other similar events.

15.5 "Governing Law and Venue" This Agreement will be governed by and interpreted in accordance with the laws of the State of California without reference to its choice of laws 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 will be brought solely in the state and federal courts in the County of El Dorado, CA and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

15.6 "Assignment" ZOLL may assign or transfer this Agreement, provided that ZOLL's successor agrees to assume all of ZOLL's obligations and responsibilities under this Agreement. Customer may not assign or transfer, by operation of law or otherwise, any of its rights or obligations under this Agreement (including any license granted hereunder), or delegate any of its duties under this Agreement, to any third party without ZOLL's prior consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement will be binding upon and will inure to the benefit of ZOLL's and Customer's permitted successors and assigns.

15.7 "Waivers; Severability" All waivers must be in writing. Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of the Agreement is 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 will continue in full force and effect.

15.8 "Contract Administrator" The County Officer or employee with responsibility for administering this Agreement is Richard Todd, Emergency Medical Services Agency Administrator, or successor.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____
Richard Todd
Emergency Medical Services Agency Administrator

Dated: _____

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____
Daniel Nielson, M.P.A., Director
Health and Human Services Agency

Dated: _____