

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 01/14/15
ITEM FROM FINANCE COMMITTEE MEETING OF 01/05/15

ISSUE:

17. Request for Approval of Exempt Procurement and Agreement – Software Maintenance and Services for Fire Department; Zoll Data Systems, Inc. (Jan Snyder)

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

Requested approval of exempt procurement and agreement for software maintenance and services for fire department with Zoll Data Systems, Inc. in the amount of \$25,000 for year ending June 30, 2015 (four year total amount \$116,477.90). Budget is available in general fund fire.

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

3-17-14

City of Santa Fe, New Mexico

memo

DATE: December 22, 2014

TO: Finance Committee

VIA: Oscar S. Rodriguez, Director
Finance Department 

FROM: Robert Rodarte, Officer
Purchasing Division 

ISSUE: Software Maintenance Agreement for Fire Department:
Procurement Method: Exempt: Section 18.1K: Purchasing Manual:
Vendor: Zoll Data Systems, Inc:

SUMMARY:

The City of Santa Fe Fire Department is requesting Exempt Procurement approval to Zoll Data Systems, Inc., for continued maintenance, and support of the department's electronic fire and EMS reporting software.

Zoll Data Systems, Inc, is the owner of the software used to operate the system and is considered a proprietary vendor.

The Purchasing Division recommends this Exempt Procurement approval based on the following information provided in the City of Santa Fe Purchasing Manual Section 18.1.7.L: " Purchase of computer software including ancillary service where such is required to match other software in use or where a unique or novel application is required to be used in the public interest. This will include applicable initial and subsequent licensing fees and services to modify and maintain proprietary software, if such services are available from only a single provider".

Funding for this service request is available in Business Unit 12089.530210 (Emergency Services/Ambulance Medical).

Procurement History with Zoll Data Systems, Inc:

Year ending 6/30/2015	\$ 00.00 (\$25,000 projected)
Year ending 6/30/2014	\$ 22,102.31
Year ending 6/30/2013	\$ 32,499.66
Year ending 6/30/2012	\$ 24,838.35
Year ending 6/30/2011	\$ 1,150.00

ACTION:

It is requested that this Exempt Procurement for approximately \$25,000 for year ending 6/30/2015, to Zoll Data Systems Inc., for the Fire Department for Maintenance and Support of their electronic fire and EMS reporting software, be approved and submitted to the City Council for its consideration.

City of Santa Fe, New Mexico

memo

DATE: October 22, 2014
TO: Robert Rodarte, Purchasing Director
FROM: Jan M Snyder, Assistant Chief
Subject: Approval of Procurement Exemption - Zoll Data Systems, Inc.

ISSUE:

The City of Santa Fe Fire Department is requesting an exemption to the City's Purchasing Manual to pay for an annual maintenance agreement with "Zoll Data Systems, Inc."

SUMMARY:

Zoll Data Systems, Inc. is the proprietary vendor for their software license and maintenance service program which supports the department's electronic fire and EMS reporting software. The software licenses provided by and maintained by Zoll Data Systems has been used by the department since 2010 and is critical to incident reporting and data collection.

The original agreement, as stated on line 11.1 states "The term of this MSLA will begin on the effective date and will continue until terminated by either party as provided in Section 11.2 (the "Term)." To comply with the City of Santa Fe Purchasing Manual, we are identifying an expiration date on the maintenance agreement portion of the original document, see attached.

This exemption request is based on information provided in the City of Santa Fe Purchasing Manual Section 18.1 Exemptions 7-L: "Purchases of computer software including ancillary service, where such is required to match other software in use or where a unique or novel application is required to be used in the public interest. This will include applicable initial and subsequent licensing fees and services to modify and maintain proprietary software, if such services are available from only a single provider."

ACTION:

Please approve this exempt purchase request for Zoll Data Systems, Inc. for their new Maintenance Service Agreement with the City of Santa Fe.

Attachments: (2)

Zoll Data Systems, Inc. Licensing and Maintenance Service Program Agreement -2010
Zoll Data Systems, Inc. Software Maintenance Agreement - 2014

City of Santa Fe, New Mexico

memo

DATE: October 29, 2014
TO: Finance Committee
City Council
FROM: Jan-M. Snyder, Assistant Fire Chief *JS*
SUBJECT: Renewal of Software Maintenance Agreement – Zoll Data Systems
VIA: Erik Litzenberg, Fire Chief *EL*
CC: Robert Rodarte, Purchasing Director

The City of Santa Fe Fire Department respectfully requests permission to continue a Software Maintenance Agreement with Zoll Data Systems, Inc. based off the original Master Software License Agreement (10-0533). The 4 year cost for this agreement will be \$116,477.90

The Department has been using Zoll Data Systems as our electronic fire and EMS incident reporting system for over 4 years. This new agreement allows the Department to keep necessary maintenance and service support for this critical software system.

The funds for the gurneys will come from the Department's General Fund budget, BU 12087.530710.

We are requesting your approval of this agreement and passing the consideration on to the governing body.

Please feel free to contact me with any further questions at 955-3121.

Attachments: (5) Zoll Master Software License Agreement, 10-0533 - 2010
Zoll Software Maintenance Agreement with Addendum - 2014
Memo for Approval of Procurement Exemption
Letter from Zoll Data Systems, Inc. declaring sole provider for maintenance of their Software
Summary of Contracts, Zoll Data Systems, Inc.

FOR ZOLL: ZOLL Data Systems, Inc.

Signature:

Sandy King

Name:

Sandy King

Title: *Accounting Operations Manager*

Date: *11/21/14*

FOR CUSTOMER:

Signature:

Name:

Title:

Date:

TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms used in this Maintenance Agreement will have the meanings set forth in this Section 1. Capitalized terms not defined in this Section 1 will have the meanings set forth in the MSLA. All other capitalized terms will be as defined in this Maintenance Agreement.

1.1. **"Critical Error"** means any Error that prevents Customer from accessing and using the Supported Program for a purpose for which the Customer has a then-immediate need and for which there is no reasonable workaround. By way of example, a Critical Error would include a situation in which all users are unable to login to the RescueNet Dispatch system, but not a situation in which only certain users are unable to login to the RescueNet Dispatch system and there is an acceptable workaround available by logging in under an unaffected user account.

1.2. **"Designated Interface"** means the contact person or group designated by Customer and agreed to by ZOLL who will coordinate all Maintenance Services requested by Customer.

1.3. **"Error"** means a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program not to operate substantially in accordance with the Documentation.

1.4. **"Major Update"** means any Update designated by a change in the numeral in the version number of the Software immediately to the right of the decimal point (e.g., 4.0, 4.1, 4.2) or immediately to the left of the decimal point (e.g., 4.0, 5.0, 6.0).

1.5. **"Resolution"** means a modification, correction, release or workaround to a Supported Program (or the Documentation for a Supported Program), or other information provided by ZOLL to Customer intended to resolve an Error.

1.6. **"Emergency Hours"** means 24 hours a day, 7 days a week.

1.7. **"Business Hours"** means 6 am to 6 pm (Mountain Time), Monday through Friday, excluding ZOLL holidays.

1.8. **"Supported Environment"** means a hardware, software and telecommunications operating environment designated by ZOLL for use with the Supported Program.

1.9. **"Telephone Support"** means the following, provided by ZOLL via a telephone number designated by ZOLL for Maintenance Services: (a) clarification of functions and features of the Supported Program; (b) clarification of the Documentation for the Supported Program; (c) guidance in operation of the Supported Program; (d) assistance in identifying and verifying the causes of suspected Errors in the Supported Program; and (e) advice (if reasonably possible) on bypassing identified Errors in the Supported Program.

1.10. **"Update"** means a subsequent release of the Software which ZOLL makes generally available at no additional fee to customers that have purchased Maintenance Services for the Software. An Update does not include any release, upgrade, option future, functionality or product which ZOLL provides at an additional fee or separately from the Software.

2. **MAINTENANCE SERVICES.** The Maintenance Services provided under this Maintenance Agreement will include the following:

2.1. **Updates.** From time to time, ZOLL may make Updates available to Customer for purposes of providing patches, bug fixes, new functionality or addressing other issues regarding the Software. Customer agrees to promptly install all Updates received from ZOLL. Unless otherwise agreed by the parties, Customer will be solely responsible for the installation of any Updates in accordance with the Documentation and the installation instructions provided by ZOLL. If ZOLL agrees to install any Updates on behalf of Customer, ZOLL will invoice Customer, and Customer will pay ZOLL, for all such work performed at ZOLL's then-current professional services rates.

2.2. **Technical Support.**

(a) **Critical Errors.** Subject to the terms of this Maintenance Agreement, ZOLL will provide Telephone Support to the Designated Interface during Emergency Hours to address all Critical Errors reported to ZOLL by the Designated Interface and use commercially reasonable efforts to provide a Resolution to all such Critical Errors through Telephone Support.

(b) **Other Errors.** Subject to the terms of this Maintenance Agreement, ZOLL will provide Telephone Support to the Designated Interface during Business Hours to address all other Errors relating to the Supported Program reported to ZOLL by the Designated Interface and use commercially reasonable efforts to provide a Resolution to all such other Errors through Telephone Support.

(c) **Tracking.** Customer will use the service request number provided by ZOLL in connection with each Error in all correspondence and communications with ZOLL relating to that Error.

3. **CUSTOMER RESPONSIBILITIES.**

3.1. **Designated Interface.** Customer will name a Designated Interface for all Maintenance Services. Only customer employees who have been suitably trained with respect to the Supported Programs may serve as the Designated Interface for Maintenance Services. ZOLL may, in its sole discretion, require that the Designated Interface be changed if ZOLL believes the Designated Interface does not have suitable skill and experience with respect to the Supported Programs. In such event, Company will promptly designate a suitable replacement Designated Interface.

3.2. **Access and Assistance.** Customer will provide ZOLL with reasonable assistance in resolving any Error, including providing ZOLL with sufficient access to and information regarding Customer's hardware, software or telecommunications environment to enable ZOLL to diagnose and duplicate the Error and (as applicable) to provide a Resolution to the Error and verify that the Error has been resolved. Customer will maintain at its own expense all appropriate equipment and software necessary to provide ZOLL with remote access to Customer's computer systems allowing ZOLL the same level of access to all applicable computer systems as Customer's employees having the highest level of privilege or clearance (and in all cases in accordance with any ZOLL remote access specifications).

3.3. **Additional Requests.** Customer will comply with all additional reasonable requests of ZOLL in connection with the provision of the Maintenance Services, including taking all steps necessary to implement Resolutions and other procedures provided by ZOLL within a reasonable time after receiving such Resolutions and procedures from ZOLL.

4. **EXCEPTIONS.** ZOLL will have no obligation to provide any Maintenance Services under this Maintenance Agreement if: (a) Customer is in breach of this Maintenance Agreement or the MSLA; (b) the MSLA is terminated or expires; (c) the Software is not installed on or operated in a Supported Environment; (d) the software, hardware or equipment comprising the Supported Environment is not operated in accordance with the applicable manufacturer's documentation or specifications; or (e) the Software is not being operated in accordance with ZOLL's applicable Documentation or specifications. In addition, ZOLL will have no obligation for any Error that: (i) cannot be reasonably remedied due to the operational characteristics of Customer's hardware, software or telecommunications environment; (ii) is due to any third party products,

hardware equipment, software, or data or the use or combination of the Software with any third party products, hardware, equipment, software, or data (including, as applicable, the Supported Environment); (iii) is due to any Software other than the Supported Programs; (iv) is due to any modifications to the Software not provided by ZOLL; (v) is caused by Customer's negligence, accident, abuse, neglect, misapplication or misuse of the Software; or (vi) otherwise results from causes other than ordinary use of the Software. ZOLL will have no liability for any changes required by Customer's hardware, software or telecommunications environment which may be necessary to use any Software due to the implementation of a Resolution. ZOLL will be required to provide the Maintenance Services only for the most current release and the two immediately preceding Major Updates of a Supported Program. ZOLL may modify the Supported Environment at any time upon 6 months notice to Customer. If Customer requests and ZOLL agrees to remedy any errors or problems not covered by the terms of this Maintenance Agreement, ZOLL will invoice Customer, and Customer will pay ZOLL, for all such work performed at ZOLL's then-current professional services rates.

5. SOFTWARE LICENSE. All Updates, Resolutions and any other software, data, information or materials provided under this Maintenance Agreement and all worldwide Intellectual Property Rights therein and related thereto: (1) are and will remain the exclusive property of ZOLL and its suppliers; and (2) are licensed to Customer by ZOLL for use as "Software" in accordance with the MSLA. All rights in and to such Updates, Resolutions and other software, data, information or materials not expressly granted to Customer in this Maintenance Agreement are reserved by ZOLL and its suppliers.

6. TERM AND TERMINATION.

6.1. TERM. The term of this Maintenance Agreement will begin on the Effective Date, unless earlier terminated in accordance with Section 6.2.

6.2. Termination. Either party may terminate this Maintenance Agreement if the other party materially breaches any provision of this Maintenance Agreement and does not cure such breach within 30 days after receiving notice thereof. In addition, (a) Customer may terminate this Maintenance Agreement by providing notice to ZOLL at least 30 days prior notice; (b) ZOLL may terminate this Maintenance Agreement effective upon notice to Customer if ZOLL ceases to make any of the Maintenance Services offered under this Maintenance Agreement generally available to its other customers; or (c) ZOLL may terminate this Maintenance Agreement for convenience at any time upon 30 days notice to Customer.

6.3. Reinstatement. If this Maintenance Agreement is terminated for any reason and Customer later elects reinstate Maintenance Services for the Supported Programs, provided that ZOLL still makes such Maintenance Services generally available to its other customers at the time of such election and upon agreement by ZOLL, ZOLL will reinstate Maintenance Services for the Supported Programs under this Maintenance Agreement upon payment by Customer of the applicable Maintenance Fees which would have accrued during all such periods in which Maintenance Services for the Supported Programs were not maintained by Customer.

6.4. Effect of Termination. Upon any termination of this Maintenance Agreement: (a) ZOLL may immediately cease performing all Maintenance Services provided under this Maintenance Agreement; (b) Customer will pay to ZOLL any Maintenance Fees or other Fees owed to ZOLL under this Maintenance Agreement; (c) Customer will promptly return to ZOLL, or at the request of ZOLL destroy, all property and equipment of ZOLL (including any Confidential Information) in its possession or control, including all copies thereof; and (d) upon the request of ZOLL, Customer will certify in writing to its compliance with this Section 6.4. Following completion of the foregoing obligations of Customer, ZOLL will refund to Customer any Maintenance Fees prepaid by Customer but unused as of the effective date of such termination. Sections 1 (Definitions), 6.4 (Effect of Termination) 8.2 (Disclaimer), 9 (Limitation of Liability) and 10 (Additional Terms) will survive any termination of this Maintenance Agreement for any reason.

7. FEES AND EXPENSES; PAYMENT.

7.1. Fees. As of the Effective Date, the Annual Maintenance Fees due under this Maintenance Agreement are as set forth on the initial page of this Maintenance Agreement. During the term of this Annual Maintenance Agreement, the Maintenance Fees will be equal to 20% of ZOLL's then-current list price (excluding any discounts) for all Software included in the Covered Programs and the total combined Services Fees due under the MSLA for any customization of the Software included in the Covered Programs performed by ZOLL.

7.2. Expenses. Maintenance Services may be provided on-site at Customer's location, as determined in ZOLL's sole discretion. If ZOLL is required to perform any Maintenance Services on-site at a location of Customer, Customer will reimburse ZOLL for any reasonable out-of-pocket costs and expenses incurred by ZOLL relating to supplies, travel, meals and lodging, as well as and any other costs and expenses incurred by ZOLL in performing such Maintenance Services which are not of the sort normally provided or covered by ZOLL.

7.3. Payment. On or before the Effective Date, Customer will pay ZOLL the Maintenance Fee for the Initial Maintenance Period indicated on the initial page of this Maintenance Agreement. Thereafter, ZOLL will invoice all Maintenance Fees on a quarterly basis at the Quarterly Fee indicated on the initial page of this Maintenance Agreement (as adjusted per Section 7.1). Customer will pay ZOLL all amounts shown on such invoices within 30 days after the date of the applicable invoice. All payments must be made in U.S. dollars, unless otherwise agreed by the parties. ZOLL will be under no obligation to provide any Maintenance Services until all Maintenance Fees for the Initial Maintenance Period have been paid by Customer and ZOLL may thereafter suspend Maintenance Services to Customer if any invoice is past due. Any amounts not paid when due may result in the forfeiture of any discounts offered on the Effective Date. Except as may be provided in this Maintenance Agreement, all Maintenance Fees are non refundable once paid to ZOLL.

7.4. Taxes. Maintenance Fees exclude, and Customer is responsible for the payment of, any applicable sales, use, value added and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on ZOLL's net income) due with respect to the Maintenance Fees or the Maintenance Services. When applicable, ZOLL may include any such taxes that it is required to collect as a separate line item on invoices to Customers.

8. LIMITED WARRANTY AND DISCLAIMER.

8.1. Limited Warranty. ZOLL warrants that any Maintenance Services provided to Customer under this Maintenance Agreement 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 8, use commercially reasonable efforts to re-perform the Maintenance Services which gave rise to the breach or, at ZOLL's option, refund the Maintenance Fees paid by Customer for the Maintenance Services which gave rise to the breach; provided that Customer notifies ZOLL of the breach in reasonable detail within 30 days following performance of the defective Maintenance Services, specifying the breach in reasonable detail. The Updates, Resolutions and other software, data, information or materials provided under this Maintenance Agreement will in no way extend or alter the scope or duration of any warranty for the Software provided under the MSLA.

8.2. Disclaimer. THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION 8 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THIS MAINTENANCE AGREEMENT AND THE MAINTENANCE SERVICES AND SOFTWARE PROVIDED HEREUNDER, AND ZOLL EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 8 AND THAT NO WARRANTIES ARE MADE BY ZOLL OR ZOLL'S SUPPLIERS.

9. Limitation of Liability. The total liability of ZOLL for all claims of any kind, whether in contract, tort (including negligence), strict liability or otherwise, arising out of, connected with, or resulting from the performance or breach of this Maintenance Agreement or the Maintenance Services provided hereunder during any 3 month period will in no event exceed the total Maintenance Fees paid by Customer under this Maintenance Agreement during such period. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT, (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, WILL ZOLL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY NATURE, EVEN IF ZOLL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR REVENUES, CLAIMS OF CUSTOMER, LOSS OF USE OF ANY EQUIPMENT OR SOFTWARE, SYSTEMS, FACILITIES, LOSS OF DATA OR INFORMATION, LACK OR LOSS OF PRODUCTIVITY, INTEREST CHARGES OR COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, SOFTWARE, SYSTEMS OR SERVICES, COST OF PURCHASED OR DOWNTIME COSTS.

10. ADDITIONAL TERMS.

10.1. No Assignment. Customer may not assign, delegate or transfer, by operation of law or otherwise, this Maintenance Agreement or any of its rights or obligations under this Maintenance Agreement to any third party without ZOLL's prior written consent. Any attempted assignment, delegation or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign or transfer this Maintenance Agreement, provided that ZOLL's successor agrees to assume all of ZOLL's obligations and responsibilities under this Maintenance Agreement.

10.2. Independent Contractors. The relationship of the parties under this Maintenance Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

10.3. Governing Law and Venue. This Maintenance Agreement will be interpreted in accordance with the laws of the State of New Mexico, without reference to its choice of laws rules. Any action or proceeding arising from or relating to this Maintenance Agreement shall be brought in a federal or state court in Denver, Colorado (or otherwise having jurisdiction of matters occurring in Santa Fe, New Mexico) and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The United Nations Convention on the Sale of Goods shall not be applicable to this Maintenance Agreement.

10.4. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

10.5. U.S. Government End Users. The Covered Programs and all software provided under this Maintenance Agreement is a "commercial item" as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth in this Maintenance Agreement, and do not acquire any other right, title or interest, express, implied or otherwise, in or to the Software.

10.6. Waiver. Any waiver of the provisions of this Maintenance Agreement or of a party's rights or remedies under this Maintenance Agreement must be in writing to be effective. Failure or delay by a party to enforce the provisions of this Maintenance Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Maintenance Agreement and will not in any way affect the validity of the whole or any part of this Maintenance Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Maintenance Agreement, no exercise or enforcement by either party of any right or remedy under this Maintenance Agreement will preclude the enforcement by such party of any other right or remedy under this Maintenance Agreement or that such party is entitled by law to enforce.

10.7. Severability. If any term, condition, or provision in this Maintenance Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Maintenance Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

City of Santa Fe (Customer) and Zoll ("ZOLL") ADDENDUM

1. TERMINATION

This Agreement may be terminated by either party upon 30 days written notice to the other party.

2. INDEMNIFICATION

ZOLL shall indemnify, hold harmless and defend the Customer from all losses, damages, claims or judgment, including payment of reasonable attorneys' fees and cost that may result from any third party claim if and to the extent proximately caused by ZOLL's breach of this Agreement or the negligence or willful misconduct of ZOLL; provided that this indemnity shall not be applicable to the extent any damages are proximately caused by the breach, negligence or willful misconduct of the Customer. Customer shall provide ZOLL with (i) prompt notice of any indemnifiable loss or claim, (ii) the option to assume the defense of any indemnified claim, and (iii) the right to approve or reject the settlement of any indemnified claim. If ZOLL assumes the defense, ZOLL shall not be liable for attorneys' fees thereafter incurred by the Customer.

3. CHOICE OF LAW

This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the Customer and the State of New Mexico, without giving effect to the conflict of law principles thereof.

4. NEW MEXICO TORT CLAIMS ACT

Any tort liability incurred by the Customer in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Customer and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

5. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Customer for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Customer, this Agreement shall terminate upon written notice being given by the Customer to ZOLL. The Customer's decision as to whether sufficient appropriations are available shall be accepted by the ZOLL and shall be final.

6. RELEASE

ZOLL, upon acceptance of final payment of the amount due under this Agreement, releases the Customer, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. ZOLL agrees not to purport to bind the Customer to any obligation not assumed herein by the Customer unless ZOLL has express written authority to do so, and then only within the strict limit of that authority.

7. INSURANCE

ZOLL shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. ZOLL shall furnish the Customer with proof of insurance of ZOLL's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

8. RECORDS AND AUDIT

ZOLL shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Customer, the Department of Finance and Administration, and the State Auditor. The Customer shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Customer to recover excessive or illegal payment.

Signature Lines required:

Customer:

Zoll Data Systems

Javier M. Gonzales, Mayor

Sandy King - Accounting Operations Manager
Name & Title

Date: _____

Date: 11/21/14

Attest:

CRS# 02-451824-00-7
City of Santa Fe Business
Registration# 14-00129002

Yolanda Y. Vigil, City Clerk



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 FOR: ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor Zoll Data Systems, Inc.

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$171,799.48

Termination Date: None

Approved by Council Date: June 30, 2014

or by City Manager Date: _____

Contract is for: Professional leadership coaching for executive fire officers, upper-level management and front-line supervisors within the Fire Department

Amendment # 1 to the Original Contract# 10-0533

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: June 30, 2018

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for: To continue the maintenance and service agreements with Zoll Data Systems.

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source Approved by Council: _____ Date: June 30, 2010

Other _____

6 **Procurement History:** Original license and maintenance agreement still being used.
example: (First year of 4 year contract)

7 **Funding Source:** General Fund **BU/Line Item:** 12087.5371

8 **Any out-of-the ordinary or unusual issues or concerns:**
See attached Memo
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Jan M Snyder, Assistant Chief

Phone # 955-3121

10 **Certificate of Insurance attached.** (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

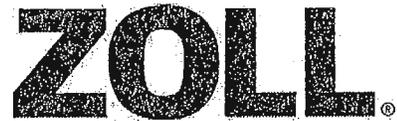
To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:



Oct 28, 2014

Jan Snyder
City of Santa Fe Fire Dept.
4178 Cheyenne Circle
Santa Fe, NM 87507

To Whom It May Concern:

This letter serves as notification that ZOLL is the sole developer, distributor and only authorized provider of the software and technical support for any and all ZOLL applications, including but not limited to:

- RescueNet Billing
- RescueNet Code Review
- RescueNet CommCAD
- RescueNet Crew Scheduler
- RescueNet Dispatch
- RescueNet DispatchPRO
- RescueNet ePCR Suite
- RescueNet easyPCR
- RescueNet Eligibility
- RescueNet FireRMS
- RescueNet Insight
- RescueNet Insight Analytics
- RescueNet Link
- RescueNet Navigator
- RescueNet Nomad
- RescueNet Resource Planner
- RescueNet Road Safety
- RescueNet TabletPCR
- RescueNet WebPCR
- RescueNet WebViewer
- RescueNet @Work
- ZOLL Online
- NetTransit

Regards,

Roger Gallup
Manager Software Support
ZOLL

ZOLL Data Systems, Inc.

Sales Order #

4793

MASTER SOFTWARE LICENSE AGREEMENT

THIS MASTER SOFTWARE LICENSE AGREEMENT ("MSLA") is made as of 06/08/2010 (the "Effective Date"), by and between ZOLL Data Systems, Inc., a Delaware corporation with offices at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021 ("ZOLL") and the party identified below (the "Customer").

Bill To: Santa Fe Fire Dept, City of	Ship To: Santa Fe Fire Dept, City of
Attn. To: Valenzuela, Gilberto	Attn. To: Valenzuela, Gilberto
Address: 200 Morales Rd PO Box 909 Santa Fe, NM 87504	Address: 200 Morales Rd PO Box 909 Santa Fe, NM 87504
Sales Rep: Morales, Edie	Ship Via: FedEx

Item	Description	Qty	List Price	Disc.	Adj. Price	Ext. Price
RESCUENET ePCR SUITE						
RFDS	RescueNet ePCR Base System - New Customers	1	\$8,600.00	15.00%	\$7,225.00	\$7,225.00
TFSU	Fax Server Utility	1	\$3,500.00	15.00%	\$2,975.00	\$2,975.00
NEMIT	RescueNet ePCR ImageTrend Extract	1	\$6,500.00	15.00%	\$5,525.00	\$5,525.00
TSEC	Security Module	1	\$4,500.00	15.00%	\$3,825.00	\$3,825.00
TMUL	TabletPCR Mobile Unit License	8	\$3,000.00	15.00%	\$2,550.00	\$16,300.00
PHY	TabletPCR Medtronic LifeNet SDK (Physio Interface)	1	\$4,500.00	15.00%	\$3,825.00	\$3,825.00
TNUL	RescueNet ePCR Network User / WebPCR User	2	\$3,000.00		\$3,000.00	\$6,000.00
TABFRMS	TabletPCR Interface to RescueNet FireRMS	1	\$0.00		\$0.00	\$0.00
RESCUENET FIRERMS						
FENT825	FireRMS Enterprise Edition Per Station (08-25)	6	\$3,000.00	15.00%	\$2,550.00	\$15,300.00
FMI	FireRMS Mobile Per Device (1-174)	20	\$895.00	15.00%	\$845.75	\$16,915.00
FSYNC	FireRMS Sync Manager	1	\$5,000.00	15.00%	\$4,250.00	\$4,250.00
FRMSMDB2	FireRMS Mobile Dashboard Per Device (10-10)	14	\$460.00	15.00%	\$382.50	\$5,355.00
FSIM	FireRMS Supplies & Inventory Module Per Machine (1-3)	2	\$2,500.00	15.00%	\$2,125.00	\$4,250.00
FMWOM	FireRMS Maintenance & Work Orders Module Per Machine (1-3)	1	\$2,500.00	15.00%	\$2,125.00	\$2,125.00
FSMSADTS	SMS Add-On FireRMS Teletext Interface	1	\$3,000.00	15.00%	\$2,550.00	\$2,550.00
FSMSCAD	SMS w/ FireRMS CAD Interface - Other	1	\$8,000.00	15.00%	\$6,800.00	\$6,800.00
Other Deployment / Project Management / Other Special						
RNT	RescueNet ePCR Deployment (Excludes T&E)	1	\$10,500.00		\$10,500.00	\$10,500.00
RNFD	RescueNet FireRMS Deployment (Excludes Travel & Expenses)	8	\$1,500.00		\$1,500.00	\$13,500.00
RNFT	RescueNet FireRMS Training (Excludes Travel & Expenses)	6	\$1,500.00		\$1,500.00	\$7,500.00
RNFS	RescueNet FireRMS SMS Interface Deployment	2	\$1,500.00		\$1,500.00	\$3,000.00
T&E	Travel Expenses (Not to exceed)	1	\$13,000.00		\$13,000.00	\$13,000.00
PRMH	Project Management (Excludes Travel & Expenses)	1	\$13,000.00		\$13,000.00	\$13,000.00
Other Licenses						
ICC10	ICC 2006 - Intl. Fire Code Lic. 10 Concurrent Users (Annual)	1	\$377.50		\$377.50	\$377.50
ICCMOB	ICC 2006 - Intl. Fire Code Lic. Mobile (Per Device) (Annual)	8	\$50.33		\$50.33	\$301.08
E85-00074	SQL Server 2005 Standard RUNTIME ; Processor License	2	\$3,500.00		\$3,500.00	\$7,000.00
E85-00705	SQL Server 2005 Standard RUNTIME ; Processor License EM 1 Yr	2	\$700.00		\$700.00	\$1,400.00

Total Software Discount Amount: \$16,980.00

SUBTOTAL SOFTWARE: \$111,299.48
 SUBTOTAL SERVICES / IMPLEMENTATION: \$60,500.00

Comments: Please note that the SMS interface for \$6800 is for the ZOLL portion of the CAD interface.

TOTAL SOFTWARE & IMPLEMENTATION (EXCL MAINT): \$171,799.48

Note: Taxes (if applicable) will be added at the appropriate rate upon invoicing.

1.5% HGAC fee will be added to grand total

MAINTENANCE FEES: \$25,240.00

Customer initials: 

ZOLL Data Systems, Inc.
MASTER SOFTWARE LICENSE AGREEMENT

Sales Order #:

Payment Terms: Customer will pay to ZOLL an amount equal to 50% of the SUBTOTAL SOFTWARE amount indicated above on the Effective Date. A second payment equal to 50% of the SUBTOTAL SOFTWARE amount shall be paid by Customer no later than one week prior to the installation of Software. The remaining balance (100% of SUBTOTAL SERVICES/IMPLEMENTATION amount above) will be paid within 30 days of Customer's receipt of ZOLL's invoice for such balance, which invoice shall be issued on the earlier of: (a) the completion of services; or (b) 6 months from the Effective Date (unless the Software has not been deployed due to a delay caused by ZOLL). Any amounts not paid when due may result in the forfeiture of any discounts offered on the Effective Date

Maintenance Fees: Maintenance is without charge for 90 days from the Deployment Date. Thereafter, Maintenance Fees are 20% of the total combined Services Fees for customization of the Software performed by ZOLL pursuant to a Statement of Work (SOW), if any, and the then-current list price for the Software, excluding discounts. Maintenance Fees for third party software are set by the software vendor.

Service Fees: Service Fees are specified in each SOW. Customer will also reimburse ZOLL for all reasonable out-of-pocket expenses (including travel and accommodation expenses) incurred by ZOLL in providing the Services.

Scope of License: Software licensed on a per site or per user basis as indicated above may not be installed or used at greater than the number of sites indicated or used by more than the number of concurrent users indicated, as applicable.

Tax Exempt Status: If Customer is tax exempt or pays state taxes directly, then prior to invoicing, Customer must provide ZOLL with a copy of a current tax exemption certificate issued by Customer's state taxing authority for the given jurisdiction.

Expiration: Agreement expires if not signed by 6/18/2010

The person signing below represents and warrants that she or he has the authority to bind Customer to the terms of this MSLA. By signing below, the parties agree to the terms and conditions of this MSLA. Once signed, any reproduction of this MSLA, or any attachment or exhibit hereto, made by reliable means (for example, photocopy or facsimile) is considered an original and all Software, Services and Maintenance Services ordered and provided under this MSLA will be subject to it.

ZOLL Data Systems, Inc.

Signature:

Name: Kevin A. Tappin Scott Ford

Title: Vice President - Sales Operations

Date: 6/30/10

Santa Fe Fire Dept, City of

Signature:

Name: David Coss

Title: Mayor

Date: 6/30/10

Attest:

Yolanda Y. Vigil, City Clerk 6/30/10

Approved as to Form:

Geno Zamora, City Attorney

Approved:

Kathryn Ravelling, Finance Director

Customer Initials:

ZOLL Data Systems, Inc.

Sales Order #:

MASTER SOFTWARE LICENSE AGREEMENT
Terms and Conditions

ZOLL shall provide Software and perform Maintenance Services and Services from time to time pursuant to this MSLA and any SOW executed by both parties. Each SOW executed by the parties will include, and incorporate therein, the applicable terms and conditions of this MSLA. Except for the execution of SOWs for Services, any different or additional terms of a related purchase order, confirmation or similar form signed by the parties after the date hereof shall have no force or effect.

1. DEFINITIONS.

- 1.1 "Deployment Date" means the date upon which the deployment of the Software is complete and the Software is able to function as described in the Documentation.
- 1.2 "Documentation" means the user's manuals provided to Customer along with the Software.
- 1.3 "Executable Code" means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.
- 1.4 "Fees" means, collectively, the Software Fees, the Maintenance Fees and the Services Fees.
- 1.5 "Initial Order" means the written, mutually executed document preceding these terms and conditions.
- 1.6 "Intellectual Property Rights" means all existing and future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.
- 1.7 "Maintenance Fees" means ZOLL's then-current standard, annual fees for the Maintenance Services.
- 1.8 "Maintenance Services" means those maintenance and support services to be provided by ZOLL to Customer with respect to the Software pursuant to Section 4 below.
- 1.9 "Order Form" means a written document mutually agreed to and signed by the parties and made a part of this MSLA, setting forth such additional Software and/or user seats to be provided to Customer under the terms of this MSLA during the Term.
- 1.10 "Service Fees" means the fees for the provision of Services set forth on the applicable SOW executed by the parties.
- 1.11 "Services" means those installation, professional and other services and assistance to be provided by ZOLL or its subcontractors to Customer as described in this MSLA and any applicable SOW executed by the parties.
- 1.12 "Software" means the computer software program or programs described in the Initial Order and any Order Form, as well as any modified, updated or enhanced versions of such programs that ZOLL may provide to Customer pursuant to the Services and/or Maintenance Services.
- 1.13 "Software Fees" means ZOLL's then-current standard fees for the license of Software set forth in the Initial Order or any subsequent Order Form.
- 1.14 "Source Code" means the human-readable version of a software program that can be compiled into Executable Code.
- 1.15 "SOW" means the engagement plan for Services to be performed by ZOLL and must be agreed to and signed by both parties before becoming effective.

2. LICENSE GRANT, RESTRICTIONS AND OWNERSHIP.

- 2.1 **Software License Grant.** Subject to the terms and conditions of this MSLA, ZOLL grants to Customer a perpetual (subject to Section 1.2), non-exclusive, non-transferable license to (a) install and use the Software in Executable Code form only on Licensee's servers and workstations, only for Licensee's internal business purposes, and subject to any limitations specified on the Initial Order; (b) make 1 copy of the Software solely for backup or archival purposes; and (c) copy and reproduce the Documentation provided to Licensee solely for the purposes of facilitating Licensee's use of the Software. Software is not intended for use in the diagnosis, mitigation, treatment or prevention of a disease or other condition in humans or animals.
- 2.2 **Restrictions On Use.** Except as expressly permitted by this MSLA, Customer shall not, and shall not permit any third party, to: (a) 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 for the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (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 except as expressly permitted under Section 2.1.
- 2.3 **Proprietary Rights.** The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of ZOLL and its suppliers. All rights in and to the Software not expressly granted to Customer in this MSLA are reserved by ZOLL and its suppliers.

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3. DELIVERY. ZOLL shall deliver the Software and Documentation FOB ZOLL's shipping point.

4. **SERVICES.** If Customer has executed a SOW for the performance of Services, then subject to payment by Customer of the Service Fees in accordance with any payment schedule agreed to by the parties, ZOLL will use commercially reasonable efforts to perform the Services in accordance with such SOW and the terms of Exhibit B. ZOLL shall only be liable for failure to meet time frames or completion dates if such failure is due solely to ZOLL's negligence, and its liability will be limited to the Service Fees paid for the deficient Services. If Customer fails to schedule installation within 6 months from the Effective Date, or postpones or cancels a scheduled installation with less than 30 days notice, ZOLL may charge, and Customer shall pay, an additional installation fee plus any additional costs incurred as a result. If either party proposes in writing a change to the scope or timing of the 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. If Customer elects to have ZOLL develop custom software, Customer agrees that the functionality provided by the custom software is not essential to Customer's use of the Software.

5. **MAINTENANCE SERVICES.** At its option, Customer may procure Maintenance Services from ZOLL on a quarterly basis. Subject to Customer's payment of all applicable Maintenance Fees, ZOLL shall provide Customer with those Maintenance Services described in Exhibit A. ZOLL will provide the Maintenance Services only for the most current release and the two immediately preceding major releases of the Software. ZOLL may elect to cease supporting a platform upon 6 months notice to Customer.

6. FEES AND PAYMENT.

6.1 **Software Fees.** Customer will pay to ZOLL the Software Fees set forth in the Initial Order and any Order Form in accordance with the terms and conditions specified on the order. Except as expressly provided in this MSLA, all Software Fees are non-refundable.

6.2 **Maintenance Fees.** If Customer elects to procure Maintenance Services from ZOLL, then 60 days following the Deployment Date, ZOLL will invoice Customer for 1 quarter of Maintenance Services to commence on the date of expiration of the Software Warranty Period (as defined in Section 7 below). ZOLL will invoice Customer on a quarterly basis thereafter for all further Maintenance Fees unless Customer notifies ZOLL within 30 days of the end of the then-current Maintenance Services period. ZOLL will have no obligation to provide Maintenance Services to Customer if any invoice issued under this Section 6.2 is past due. If Customer elects to discontinue Maintenance Services at any time, to reinstate Maintenance Services and receive the applicable updates and new releases, Customer must pay the Maintenance Fees for all time periods missed. All Maintenance Fees are non-refundable.

6.3 **Service Fees and Expenses.** Customer will pay all Service Fees to ZOLL in accordance with the payment schedule and terms set forth in the applicable SOW. Unless otherwise provided in the applicable SOW Customer will reimburse ZOLL for all reasonable out-of-pocket expenses (including travel and accommodation expenses) incurred by ZOLL in providing the Services.

6.4 **Payment Terms.** Unless otherwise expressly provided in this MSLA or an applicable SOW, Customer will pay ZOLL all amounts due under this MSLA within 30 days after the date of the invoice. All payments must be made in U.S. dollars, unless otherwise agreed by the parties. Any amounts not paid when due will accrue interest at the lesser of 1 1/2% per month or the maximum rate permitted by applicable law from the due date until paid. Any amounts not paid when due may result in the forfeiture of any discounts offered on the Effective Date.

ZOLL Data Systems, Inc.

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MASTER SOFTWARE LICENSE AGREEMENT

6.5 Taxes. Fees exclude, and Customer will make all payments of the Fees to ZOLL free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. When applicable, ZOLL may include any taxes that it is required to collect as a separate line item on an invoice.

6.6 Audit Rights. Upon 30 days written notice, ZOLL will have the right, during normal business hours, to 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 MSLA. The costs of the audit will be paid by ZOLL, unless the audit reveals that Customer's underpayment of Fees exceeds 5%. 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 6.4 above. Such audits will be conducted no more than once in any period of 12 consecutive months.

6.7 Third Party Fees. 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, including without limitation, clearinghouse fees.

7. WARRANTIES.

7.1 Performance. Subject to Customer's payment of the Software Fees, for a period of 90 days after the Deployment Date (the "Software Warranty Period"), ZOLL warrants that the 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 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 during the Software Warranty Period. Any such error correction provided to Customer will not extend the original Software Warranty Period.

7.2 Services. 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 7.2, re-perform the Services which gave rise to the breach or, at ZOLL's option, refund the Services Fees paid by Customer for the Services which gave rise to the breach; provided that Customer notify ZOLL in writing of the breach within 30 days following performance of the defective Services, specifying the breach in reasonable detail.

7.3 Disclaimers. The express warranties in this Section 7 are in lieu of all other warranties, express, implied, or statutory, regarding the Software, Services and Maintenance Services, and ZOLL expressly disclaims all other warranties, including any warranties of merchantability, fitness for a particular purpose, title, and non-infringement of third party rights. Customer acknowledges that it has relied on no warranties other than the express warranties provided herein and that no warranties are made herein by any of ZOLL's suppliers.

8. INFRINGEMENT CLAIMS. ZOLL will defend at its own expense any action against Customer brought by a third party alleging that the 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 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: (a) notifying ZOLL promptly in writing of such action; (b) giving ZOLL sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at ZOLL's request and expense, assisting in such defense. If the Software becomes, or in ZOLL's opinion is likely to become, the subject of an infringement claim, ZOLL may, at its option and expense, either: (i) procure for Customer the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) accept return of the Software, terminate this MSLA, in whole or in part, as appropriate, and refund Customer the Software Fees paid for such Software upon such termination, computed according to a 36 month straight-line amortization schedule beginning on the Effective Date. Notwithstanding the foregoing, ZOLL will have no obligation under this Section 8 or otherwise with respect to any infringement claim based upon: (w) any use of the Software not in accordance with this MSLA; (x) any use of the Software 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; (y) any use of any release of the Software other than the most current release made commercially available by ZOLL; or (z) any modification of the Software by any person other than ZOLL or its authorized agents or subcontractors. This Section 8 states ZOLL's entire liability and the Customer's exclusive remedy for any claims of infringement.

9. LIMITATION OF LIABILITY. ZOLL's total cumulative liability in connection with any Software, Services or Maintenance Services provided under this MSLA or any SOW, whether in contract, tort or otherwise, will not exceed the amount of fees paid to ZOLL under this MSLA during the 12 month period preceding the events giving rise to such liability. In no event will ZOLL be liable for any consequential, indirect, exemplary, special, or incidental damages, including without limitation any lost data, lost profits and costs of procurement of substitute goods or services, arising from or relating to the MSLA or any SOW, however caused and under any theory of liability (including negligence), even if ZOLL has been advised of the possibility of such damages. Customer acknowledges that the Fees reflect the allocation of risk between the parties and that ZOLL would not enter into the MSLA or any SOW without these limitations on ZOLL's liability. In addition, ZOLL disclaims all liability of any kind of its suppliers.

10. CONFIDENTIALITY.

10.1 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 Software, 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 the MSLA, 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 the MSLA 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.

10.2 Exceptions. The Recipient's obligations under Section 10.1 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 the MSLA or an SOW 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.

10.3 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 patient or the patient's authorized representative documenting the patient's express written consent to enable the disclosure by Customer to ZOLL of protected health information.

11. TERM AND TERMINATION.

11.1 Term. The term of this MSLA will begin on the Effective Date and will continue until terminated by either party as provided in Section 11.2 (the "Term"). The term for each SOW will be set forth in the applicable SOW unless terminated pursuant to Section 11.2.

11.2 Termination. Either party may terminate this MSLA and all Statements of Work or terminate a particular SOW, as applicable, if the other party breaches any material provision of the MSLA or an SOW and does not cure such breach within 30 days after receiving written notice thereof.

ZOLL Data Systems, Inc.

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11.3 Effects of Termination. Upon termination or expiration of the MSLA for any reason: (a) any amounts owed to ZOLL under this MSLA and all Statements of Work before such termination or expiration will be immediately due and payable; (b) all licensed rights granted in the MSLA will immediately cease to exist; (c) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers and the computers of its customers, and return to ZOLL or destroy all copies of the Software and Documentation on tangible media in Customer's possession; and (d) each party shall promptly discontinue all use of the other party's Confidential Information, 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. If ZOLL terminates an SOW for cause, such termination will have no effect upon any other Statements of Work that may be in effect unless ZOLL terminates the MSLA for cause.

11.4 Survival. Sections 1, 2.2, 6.4, 6.5, 6.6, 7.3, 8, 9, 10, 11.3, 11.4 and 12, together with any accrued payment obligations, will survive expiration or termination of the MSLA for any reason.

12. GENERAL.

12.1 Compliance with Laws. Customer will comply with all applicable export and import control laws and regulations in its use of the Software.

12.2 Assignments. Customer may not assign or transfer, by operation of law or otherwise, any of its rights under the MSLA or any SOW (including its licenses with respect to the Software) 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 MSLA or any SOW to any successor to its business or assets to which this MSLA relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

12.3 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

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 comprised 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 provided to the Government (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 the MSLA and Statements of Work must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the cover page of the MSLA, and will be effective upon receipt or 3 business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party in writing.

12.6 Governing Law and Venue. This MSLA and all Statements of Work will be governed by and interpreted in accordance with the laws of the State of New Mexico, without reference to its choice of laws rules. Any action or proceeding arising from or relating to this MSLA or any SOW shall be brought in a federal or state court in Santa Fe, New Mexico and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

12.7 Waivers; Severability. All waivers must be in writing. Any waiver or failure to enforce any provision of the MSLA or an SOW 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 MSLA or an SOW 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. Without limiting the generality of the foregoing, Customer agrees that Section 9 will remain in effect notwithstanding the unenforceability of any provision in Section 7.

12.8 No Agency. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

Entire MSLA. This MSLA, together with any exhibits hereto, 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. This MSLA shall not be modified except by a subsequently dated written amendment signed on behalf of ZOLL and Customer by their duly authorized representatives.

ZOLL Data Systems, Inc.

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Exhibit A
MAINTENANCE SERVICES

1. **Definitions.** Capitalized terms used but not defined in the MSLA shall have the meanings set forth in this Section 1:

1.1 **"Designated Interface"** shall mean the contact person or group designated by Customer and agreed to by ZOLL who will coordinate all Maintenance Services requests by Customer.

1.2 **"Error"** shall mean a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program not to operate substantially in accordance with the Documentation.

1.3 **"Resolution"** shall mean a modification or workaround to the Supported Program and/or Documentation and/or other information provided by ZDS to Customer intended to resolve an Error.

1.4 **"Emergency Support Hours"** shall mean 24 hours a day, 7 days a week.

1.5 **"Business Hours"** shall mean 6 a.m. to 6 p.m., Monday to Friday (Mountain Time).

1.6 **"Supported Environment"** shall mean any hardware and operating system platform which ZOLL supports for use with the Supported Program.

1.7 **"Supported Program"** shall mean the current version of the Software, for which Customer has paid the then-current Maintenance Fees.

1.8 **"Update"** means a subsequent release of the Software which ZOLL generally makes available for Software licensees at no additional license fee other than shipping and handling charges, provided Customer has paid the Maintenance Fees for such licenses for the relevant time period. Update shall not include any release, option or future product which ZOLL licenses separately.

2. **Maintenance Services Provided.**

2.1 **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 RescueNet Dispatch program for a purpose for which the user has an immediate need (e.g., all users unable to login to the system constitutes an emergency versus a single user's inability to login, which does not constitute an emergency because there is an acceptable workaround available, logging in under a different account).

(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.

2.2 **Travel and Other Expenses.** Maintenance Services provided hereunder shall be provided at ZOLL's principal place of business, or at Customer's location at ZOLL's expense, 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 Program, ZOLL may charge Customer for reasonable travel, meals and lodging expenses. Under such circumstances, ZOLL may also charge Customer for actual costs for supplies and other expenses reasonably incurred by ZOLL, which are not of the sort normally provided or covered by ZOLL, provided that Customer has approved in advance the purchase of such supplies and other expenses. If Customer so requires, ZOLL shall submit written evidence of each expenditure to Customer prior to receiving reimbursement of such costs and expenses.

2.3 **Exceptions.** ZOLL shall have no responsibility under this MSLA to fix any Errors arising out of or related to the following causes: (a) Customer's modification or combination of the Supported Program (in whole or in part), (b) use of the Supported Program 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 Program with other media and hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; 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.

3. **Updates.** ZOLL will provide Updates for the Supported Programs as and when developed for general release in ZOLL's sole discretion. Each Update will consist of a set of programs and files made available on machine-readable media and will be accompanied by Documentation adequate to inform Customer of the problems resolved and any significant operational differences resulting from installing the Update. Unless otherwise agreed by the parties, Customer will be solely responsible for the installation of any Updates in accordance with the Documentation and the installation instructions provided by ZOLL to Customer. If Customer requests the ZOLL install updates, such Services shall be subject to an SOW executed by the parties.

4. **Customer Responsibilities.**

4.1 **Designated Interface.** Only individuals who have been trained with respect to the Supported Programs shall serve as the Designated Interface with ZDS for the Maintenance Services provided hereunder.

4.2 **Access to Personnel and Equipment.** Customer shall provide ZOLL with access to Customer's personnel and its equipment during Support Hours. This access must include the ability to remotely access the equipment on which the Supported Programs 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

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specifications of the remote access methods available and associated software needed, and Customer will be responsible for the costs and use of said equipment.

**Exhibit B
SERVICES**

1. **DEFINITIONS.** Capitalized terms used in this *Exhibit B* but not defined in the MSLA shall have the meanings set forth herein.
2. **SERVICES.**
- 2.1 **ZOLL Obligations.** ZOLL agrees to provide the Services as more specifically described in, and in accordance with, any SOW executed under the MSLA.
- 2.2 **Customer's Obligations.**
- (a) **Access.** Customer shall at its own expense 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 Services.
- (b) **Maintenance of Access Conditions.** Customer is responsible for maintaining the conditions of access specified in clause 2.2(a) above and the SOW. 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.
- (c) **Other Obligations.** Customer agrees to perform its obligations hereunder (including the SOW) in a timely manner and shall co-operate and provide ZOLL with requested information to enable ZOLL to perform the Services. 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.
3. **EXTENSION OF TIME.**
- 3.1 **Delay.** Customer acknowledges that time frames and dates for completion of the Services as set out in the SOW 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 co-operation 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 that is due to negligence of ZOLL.
- 3.2 **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 resulting from changes due to Customer's acts or omissions. If either party proposes in writing a change to the scope or timing of the 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.
- 3.3 **Notification.** Where in ZOLL's reasonable opinion there is likely to be a delay in the provision of Services under any SOW because of a cause beyond the reasonable control of ZOLL (including default or delay of Customer in performing its obligations), ZOLL will: (a) notify Customer of the circumstances of the delay; (b) give details of the likely effect of the delay and develop, at the Customer's expense, a strategy to manage the consequences of the delay; (c) request a reasonable extension of time; and (d) submit to Customer a statement of the variations to the SOW resulting from the delay.
4. **THIS SECTION INTENTIONALLY LEFT BLANK**
5. **OWNERSHIP AND LICENSE.**
- 5.1 **Ownership.** ZOLL shall retain all right, title and interest in and to: (a) 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; (b) all enhancements, modifications, improvements and derivative works of the Software and of each and any of the foregoing; and (c) all Intellectual Property Rights related to each and any of the foregoing (collectively, the "ZOLL Property").
- 5.2 **License.** Provided that Customer is not in breach of any material term of the MSLA or any SOW, ZOLL grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the ZOLL Property that is incorporated into deliverables delivered pursuant to an SOW (each, a "Deliverable"), solely for Customer's own internal business purposes in connection with the use of the Deliverable and the Software and solely for so long as the licenses to the Software granted pursuant to the MSLA remain in effect.