



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

27

2. Council Meeting Date:

August 15, 2013

TO: MAYOR & COUNCIL

3. Date Prepared: July 23, 2013

THROUGH: CITY MANAGER

4. Requesting Department: Fire Department

5. SUBJECT: Electronic Patient Care Reporting (ePCR)

6. RECOMMENDATION: Recommend award of Agreement #FD3-208-3217 with Zoll Data Systems, Inc., for the purchase of hosted ePCR services in an amount not to exceed \$84,900.

7. HISTORICAL BACKGROUND/DISCUSSION: The Fire Department creates patient care reports during patient encounters on emergency medical calls. ePCR is a complete system for preparing, transmitting, storing, analyzing, and reviewing patient medical care reports in a digital format. The use of ePCR is inevitable in today's electronic age. Fire departments and ambulance companies throughout the Valley are either using ePCR or are in the purchasing or implementation processes of ePCR currently, including Mesa, Tempe, Apache Junction, Queen Creek, Peoria, Scottsdale, Glendale, Sun Lakes and PMT. Chandler Fire applied and received a FEMA - Assistance to Firefighters Grant for implementing electronic medical reporting in an amount of \$241,248. The federal share of the grant is \$192,999 and the City matching share of 20% is \$48,249. This grant will allow Chandler Fire to again utilize electronic reporting of patient medical records. This grant provides for a system that consists of hardware and software for medical records. Tablets will be carried on all Fire Department units and paramedics will be able to utilize the technology to quickly and accurately record the medical history of the patient, the care provided and the condition of the patient at the arrival of the hospital.

8. EVALUATION PROCESS: On April 5, 2013 the City issued a Request for Proposals (RFP) to vendors experienced in providing ePCR hosted services. Four vendors responded: Sansio, ImageTrend, StarWest and Zoll Data Systems, Inc. An evaluation committee made up of members from the Fire Department evaluated the proposals in accordance with established City policies and procedures. Zoll Data Systems, Inc., scored the most points based on the criteria in the RFP. The evaluation committee recommends the award be made to Zoll Data Systems, Inc. The agreement with Zoll Data Systems, Inc., is five-year agreement for a hosted system that includes a pre-paid per chart fee, data storage, upgrades, and technical assistance.

9. FINANCIAL IMPLICATIONS: \$67,920 is available in the Fire Department's ePCR Grant FY13/14 budget, account number 217.2240.5345.3FA364. The City's matching share of 20%, \$16,980, is available in the Fire Department's budget, account number 101.2210.5921.

10. PROPOSED MOTION: Move to award Agreement #FD3-208-3217 with Zoll Data Systems, Inc., for the purchase of hosted ePCR services in an amount not to exceed \$84,900.

APPROVALS

11. Requesting Department


Val Gale, Battalion Chief

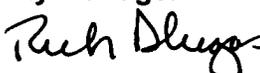
12. Department Head


Jeff Clark, Fire Chief

13. Procurement Officer


Carolee Stees, CPPB

14. City Manager


Rich Dlugas

APPLICATION SERVICE PROVIDER AGREEMENT

THIS APPLICATION SERVICE PROVIDER AGREEMENT ("Agreement") is made as of _____ (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: Chandler Fire Department

Sales Rep: Bristol, Todd

Attn. To: Gale, Val

Address: 221 East Boston Street
Chandler, AZ 85225

| Item | License Description | Qty. | List Price | Disc. | Adj. Price | Ext. Price |
|---|--|-------|-------------|-------|-------------|--------------------|
| RescueNet ePCR Suite | | | | | | |
| EPCRS | PPL RescueNet ePCR ASP Base System (Per PCR) | 12000 | \$3.00 | 63% | \$1.10 | Est. \$13,200.00* |
| EPCRSC | PPL RescueNet ePCR ASP CAD Feed (Per PCR) | 12000 | | | | INCLUDED |
| EPCRSMI | PPL RescueNet ePCR ASP Monitor Interface (Per PCR) | 12000 | | | | INCLUDED |
| EPCR SF | PPL RescueNet ePCR ASP PCR Faxing (Per PCR) | 12000 | | | | INCLUDED |
| Implementation - Deployment / Project Management / Other Special | | | | | | |
| RNT | RescueNet ePCR Deployment (Excludes T&E) | 8 | \$12,000.00 | | \$12,000.00 | \$12,000.00 |
| T&E | Travel Expenses (Not to exceed) | 1 | \$3,600.00 | | \$3,600.00 | \$3,600.00 |
| TOTAL IMPLEMENTATION: | | | | | | \$15,600.00 |
| * ESTIMATED AMOUNT BILLED MONTHLY: | | | | | | \$1,100.00 |
| * ESTIMATED ANNUAL TOTAL: | | | | | | \$13,200.00 |

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

Comments: This hosted solution includes bringing in CAD information from the Phoenix FD CAD only on our end. We will bring it in, map the data and bring it into ePCR. It also includes bringing data in from their Philips MRX defibrillators.

Estimated Amounts: Estimated amounts shown above are an estimate based on the per PCR rate noted above and the estimated number of annual PCR's.

Annual Minimum Fee: The Annual Minimum Fee is \$13,200.00. Should the actual annual billed total not meet or exceed the Annual Minimum Fee, ZOLL will invoice customer at the end of the term for the difference between the Fees paid and the Annual Minimum Fee. A 30 day grace period is allowed for implementation.

Payment Terms: The first invoice issued under this Agreement will be issued upon completion of the implementation services and will be for the sum of the TOTAL IMPLEMENTATION fees and any ONE TIME CHARGES listed above. The invoice for the first Monthly Fees hereunder will be issued 30 days after the Effective Date, or upon completion of the implementation, whichever is earlier. ZOLL will initially invoice \$48,100 in advance for usage fees (Advance Usage Fees). Once the cumulative amount invoiced exceeds the initial \$48,100 payment, ZOLL will invoice monthly at the end of each month for usage. ZOLL's monthly invoice will show a balance due rather than a crediting of the Advance Usage Fees for usage during the preceding month. ZOLL will invoice monthly at the end of each month for usage. All amounts are due within 30 days after the date of the invoice. The Total Implementation fees, the One Time Charges and the Monthly Fees are hereinafter referred to collectively as the 'Software Fees'.

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Expiration: Agreement expires if not signed by 9/30/2013

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

ZOLL Data Systems, Inc.

City of Chandler City Manager

Signature:

Signature:



Name: Heidi B. Newton

Name:

Title: Chief Financial Officer

Title:

Date: August 7, 2013

Date:

APPROVED AS TO FORM

CITY ATTORNEY 

APPLICATION SERVICE PROVIDER AGREEMENT

Terms and Conditions

1. Definitions

- 1.1. "ASP Services"** means the access to the software and components required to access the products installed on servers maintained in a cloud environment. Access is licensed for use through a web browser or other means as provided by ZOLL.
- 1.2. "BAA"** means the Business Associate Addendum attached hereto as *Exhibit A*.
- 1.3. "Confidential Information"** means all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know how, and other information that relates to the business or technology of either party and is marked or identified as confidential, or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Software and the Instructions shall be considered ZOLL's Confidential Information, notwithstanding any failure to mark or identify it as such.
- 1.4. "Fee Based Services"** means the ASP Services for which ZOLL charges Customer a fee.
- 1.5. "Initial Order"** means the written, mutually executed document preceding these terms and conditions.
- 1.6. "Instructions"** means the instructions for use of the ASP Services and the documentation and users manuals from time-to-time provided by ZOLL on the ZOLL Site.
- 1.7. "Intellectual Property Rights"** means any and all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.
- 1.8. "Order Form"** means a written document mutually agreed to and signed by the parties and made a part of this Agreement, setting forth additional ASP Services to be provided to Customer under the terms of this Agreement during the Term.
- 1.9. "Software"** means the ZOLL software that underlies the ASP Services provided to Customer, as modified, updated, and enhanced.
- 1.10. "ZOLL Site"** means the web site located at a unique URL to be provided by ZOLL to Customer where end users may download the Software and access and use the ASP Services.

2. ASP Services; Payment Obligation; Taxes.

- 2.1. Provision of ASP Services by ZOLL.** Subject to the terms and conditions of this Agreement, ZOLL will use commercially reasonable efforts to make the ASP Services available to Customer through the ZOLL Site over normal network connections, excepting downtime due to necessary maintenance and troubleshooting. Customer, not ZOLL, shall be responsible for controlling its users and protection of confidentiality of its login IDs and passwords. The BAA shall apply to the ASP Services. Customer acknowledges that (i) it is responsible for maintaining its interface and connectivity to the ASP Services and (ii) the facility(ies) used for provision of the ASP Services may be owned or operated by ZOLL, or a ZOLL affiliate or a third party, or any combination of such facilities, as determined by ZOLL.
- 2.2. Modifications and Upgrades to ASP Services.** Customer acknowledges that ZOLL may modify and upgrade the ASP Services, on an ongoing basis, in order to improve or adapt the ASP Services. Without limiting the foregoing, ZOLL will have the right, in its sole discretion, to develop, provide and market new, upgraded or modified ASP Services to Customer, including adding, removing, or modifying the functionality or features of the ASP Services accessible by Customer and its users. ZOLL will use commercially reasonable efforts to notify Customer within a reasonable period of time prior to the implementation of such changes so that Customer is reasonably informed of alterations to the ASP Services that will affect the ASP Services and Customer's use of them.
- 2.3. Support and Maintenance.** ZOLL will provide telephone support services during ZOLL's regular business hours for Service questions.
- 2.4. Payment Obligation.** Fee Based Services provided to Customer will require payment of applicable fees. The fees (the "Fees") and terms of use and payment for Fee Based Services are set forth in the Initial Order and any Order Form. 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 1½% per month or the maximum rate permitted by applicable law from the due date until paid. In addition, ZOLL reserves the right to deny Customer, and its users, access to the ASP Services in the event that any invoice is not paid in a timely manner, or to terminate this Agreement in the case of non-payment of an invoice(s); unless Customer has provided written that the invoice is the subject of a good faith dispute. Customer acknowledges that ZOLL will not be responsible for any damage or liability caused by ZOLL's interruption or termination of the ASP Services in accordance with this Section 2.3 as a result of Customer's failure to pay ZOLL in a timely manner.
- 2.5. 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. Customer will be responsible for, and will indemnify and hold harmless ZOLL from, payment of all such taxes (other than taxes based on ZOLL's net income), fees, duties, and charges, and any related penalties and interest, arising from the payment of the Fees or the delivery of the ASP Services to Customer hereunder.

3. License Grant; Restrictions; Ownership.

- 3.1. License Grant.** Subject to the terms and conditions of this Agreement, ZOLL grants to Customer, during the Term, a non exclusive, non transferable, non sublicensable license to access and use the ASP Services using the Software, each as made available to Customer through the ZOLL Site, solely for Customer's internal business purposes and solely in accordance with the Instructions.
- 3.2. Restrictions.** Customer shall not, and shall not permit any third party to: (a) modify, adapt, alter, translate, or create derivative works from the ASP Services, Software or the Instructions; (b) allow any third party access to or use of the ASP Services; (c) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the Software; or (d) otherwise use or copy the Software or the Instructions or the ASP Services in any manner not expressly permitted hereunder. Customer agrees not to use the ASP Services in excess of its authorized login protocols. Customer shall immediately notify ZOLL of any unauthorized use of Customer's login ID, password, or account or any other breach of security.
- 3.3. Remediation.** If Customer becomes aware of any actual or threatened activity contemplated by the restrictions on use set forth in Section 3.2 above, Customer will, and will cause its users to, immediately take all reasonable measures necessary to stop the activity or threatened activity and to mitigate the effect of such activity including: (a) discontinuing and limiting any improper access to any data; (b) preventing any use and disclosure of improperly obtained data; (c) destroying any copies of improperly obtained data that may have been made on their systems; (d) otherwise attempting to mitigate any harm from such events; and (e) immediately notifying ZOLL of any such event(s) so that ZOLL may also attempt to remedy the problem(s) and prevent its future occurrence.

APPLICATION SERVICE PROVIDER AGREEMENT

3.4. Ownership. The Software, Instructions, ASP Services, all proprietary technology utilized by ZOLL to perform its obligations under this Agreement, and all Intellectual Property Rights in and to the foregoing, are the exclusive property of ZOLL (or, as the case may be, its licensors and suppliers). Any rights not expressly granted to Customer hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

4. Customer Content; Security; Backups.

4.1. Customer Content. As between ZOLL and Customer, and without limiting the rights (if any) of any patient, Customer will retain all right, title and interest in and to all data, information or other content provided by Customer in its use of the ASP Services ("Customer Content"); provided, however, that ZOLL may de-identify and use Customer Content for any lawful purpose consistent with all applicable law.

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

4.3. Backup of Customer Content. While ZOLL will use commercially reasonable efforts to maintain the integrity of the Customer Content, to back up the Customer Content, and to provide full and ongoing access to the ASP Services, loss of access to the ASP Services and/or loss of Customer Content may occur. Customer will make provision for additional back-up storage of any critical Customer Content. ZOLL will not be responsible for any loss, corruption of or inaccessibility of the Customer Content due to interruption in the ASP Services or otherwise arising out of circumstances not within ZOLL's control.

5. Warranty Disclaimers.

5.1. ZOLL Service Warranty. ZOLL represents and warrants that during the Term of this Agreement, (i) ZOLL has the right to license the ASP Services and Instructions to Customer pursuant to this Agreement and (ii) the ASP Services will materially conform to the Instructions. Customer will notify ZOLL in writing of any breach of this warranty, and request a correction of the warranted nonconformity. If ZOLL is unable to provide a correction or work-around pursuant to the terms governing the provision of the ASP Services after using commercially reasonable efforts, ZOLL may terminate this Agreement upon written notice to Customer. This Section 5.1 sets forth Customer's exclusive remedy, and ZOLL's entire liability, for breach of the warranty for the ASP Services contained herein.

5.2. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE ASP SERVICES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY; ZOLL DOES NOT PROMISE THAT THE ASP SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT THEY ARE SUITABLE FOR THE PARTICULAR NEEDS OF CUSTOMER, ITS USERS OR ANY THIRD PARTY OR THAT THEY WILL BE AVAILABLE FOR ANY PERIOD AND ZOLL MAKES NO UP-TIME COMMITMENT. ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE IN TRADE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL'S LICENSORS OR SUPPLIERS.

5.3 Customer acknowledges and agrees that, in entering into the this Agreement, it has not relied upon the future availability of any new or enhanced feature or functionality, or any new or enhanced product or service, including, without limitation, updates or upgrades to ZOLL's existing product and services. ZOLL's performance obligations hereunder are limited to those expressly enumerated herein, and payment for ZOLL's performance obligations shall be due as described herein.

6. Limitation of Liability. In no event will either party be liable hereunder for any consequential, indirect, exemplary, special, punitive or incidental damages, or for any lost data, lost profits or costs of procurement of substitute goods or services, arising from or relating to this Agreement, however caused and under any theory of liability (including negligence), even if such party has been advised of the possibility of such damages. ZOLL's total cumulative liability in connection with this Agreement and the Software, whether in contract or tort or otherwise, will not exceed the amount paid TO ZOLL BY CUSTOMER FOR the ASP SERVICES provided UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) MONTH PERIOD. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability, and Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, ZOLL disclaims all liability of any kind of ZOLL's licensors and suppliers.

7. Term and Termination.

7.1. Term. The term of this Agreement ("Term") begins on the Effective Date and continues for a period of five (5) years.

7.2. Termination. Either party may terminate this Agreement without cause on thirty (30) days' prior written notice to the other party. Either party may terminate this Agreement immediately if the other party materially defaults in the performance of any of its obligations hereunder and fails to cure such default within thirty (30) days after written notice from the non-defaulting party.

7.3. Effects of Termination. Upon termination of this Agreement for any reason: (a) all amounts, if any, owed to ZOLL under this Agreement before such termination will become immediately due and payable, including, in the event of termination of this Agreement (i) by ZOLL under Section 7.2 for a material default or (ii) by Customer under Section 7.2, a termination fee ("Early Termination Fee") - if applicable as described in Section 7.4 - equal to the amount, if any, of (x) the initial Annual Fee minus (y) the sum of Monthly Fees (as defined in the Initial Order) paid by Customer to ZOLL hereunder prior to the date of termination during the initial twelve-month period (b) Customer's right to access the ASP Services will immediately terminate; and (c) Customer must (i) promptly discontinue all use of the ASP Services and (ii) return or destroy all copies of the Instructions and the Software in Customer's possession or control.

7.4 Products Excluded from Early Termination Fee. RescueNet @Work, RescueNet NetTransit, and stand alone instances of RescueNet Crew Scheduler ASP are excluded from the Early Termination Fee.

APPLICATION SERVICE PROVIDER AGREEMENT**8. Confidentiality.**

8.1. Protection. Subject to Section 4 hereof, the party receiving Confidential Information (“**Receiving Party**”) from the other party (“**Disclosing Party**”) 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 Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

8.2. Exceptions. The Receiving Party’s obligations under Section 8.1 above with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party may 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 Receiving Party 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 or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

9. Indemnification.

9.1. ZOLL will defend, at its own expense, any action against Customer brought by a third party alleging that the ASP Services infringe any U.S. patents or any copyrights or misappropriate 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 ASP Services become, or in ZOLL’s opinion are 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 ASP Services; (ii) replace or modify the ASP Services so that they become non-infringing; or (iii) terminate this Agreement, in whole or in part, as appropriate. Notwithstanding the foregoing, ZOLL will have no obligation under this Section 9.1 or otherwise with respect to any infringement claim based upon: (1) any use of the ASP Services not in accordance with this Agreement; (2) any use of the ASP Services 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; (3) the failure of Customer to implement any replacements, corrections or modifications made available by ZOLL for the ASP Services; (4) Customer Content; or (5) any modification of the ASP Services or use thereof by any person other than ZOLL or its authorized agents or subcontractors. This Section states ZOLL’s entire liability and the Customer’s exclusive remedy for any claims of infringement.

9.2. Customer shall indemnify, defend and hold ZOLL harmless from and against any and all liabilities, losses, expenses, damages and claims that arise out of information provided to ZOLL by Customer or Customer’s use of the ASP Services except to the extent same are due to ZOLL’s breach hereof or ZOLL’s gross negligence or intentional misconduct.

10. General Provisions.

10.1. Compliance with Laws and Export Regulations. Customer shall comply with all applicable laws and regulations concerning its use of the ASP Services, including without limitation if applicable all export and import control laws and regulations. Customer will not use the Services for any purpose in violation of any applicable laws. Customer agrees to defend, indemnify, and hold harmless ZOLL from and against any and all liabilities, losses, expenses, damages and claims that arise out of violation of any applicable laws or regulations by Customer or any of its agents, officers, directors, or employees.

10.2. Audits and Inspections. Upon written request from ZOLL, Customer shall furnish ZOLL with a certificate signed by an officer of Customer stating that the ASP Services are being used strictly in accordance with the terms and conditions of this Agreement. In addition, upon prior written notice, ZOLL will have the right, during normal business hours, to inspect, or have an independent audit firm inspect, Customer’s records relating to Customer’s use of the ASP Services to ensure it is in compliance with the terms of this Agreement, including with any limitation on the number of vehicles or other mechanism upon which pricing is based hereunder. 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 2.4 above.

10.3. Assignment. Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without ZOLL’s prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement to an affiliate or to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Should ZOLL decide to assign this contract, Customer will be notified in writing with at least 30 days notice.

10.4. U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Instructions 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 if provided hereunder are (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202 1 (JUN 1995) and 227.7202 3 (JUN 1995).

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

10.6. Governing Law and Venue; Waiver of Jury Trial. This Agreement will be governed by and interpreted in accordance with the laws of the State

APPLICATION SERVICE PROVIDER AGREEMENT

of Arizona without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Chandler, Arizona, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

10.7. Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the ASP Services are built on valuable trade secrets and proprietary information of ZOLL, that any actual or threatened breach hereof may constitute immediate, irreparable harm to ZOLL for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

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

10.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

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

10.11. Subcontracting by ZOLL. ZOLL may, in its sole discretion, contract with any third party to provide the ASP Services.

10.12. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

10.13. Force majeure. Neither party shall be liable for damages for any delay or failure of performance hereunder (other than payment obligation) arising out of causes beyond such party's reasonable control and without such party's fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.

10.14. Entire Agreement; Amendment; No Third-Party Beneficiaries; Survival. This Agreement, including the Initial Order and any Order Forms executed hereunder and any exhibits hereto (including the BAA), and the Terms of Use and Privacy Policy that are accessible on the ZOLL Site constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. If there is any conflict between this Agreement and the Terms of Use, this Agreement shall take precedence. This Agreement may not be amended or any provision hereof waived except in writing signed by both parties. There are no third-party beneficiaries of this Agreement. Those provisions of this Agreement that may be reasonably interpreted as surviving termination of this Agreement or the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the termination hereof.

APPLICATION SERVICE PROVIDER AGREEMENT**Exhibit A****Business Associate Addendum**

This Business Associate Addendum (this "Addendum") is entered into by and between Chandler Fire Department ("Covered Entity") and ZOLL Data Systems, Inc. ("Business Associate") in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information ("PHI") and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104 191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations collectively referred to as "HIPAA") This Addendum amends the terms and conditions of and is hereby incorporated as part of that certain agreement between Covered Entity and Business Associate entitled Application Service Provider Agreement (the "Services Agreement") and attached hereto.

STATEMENT OF AGREEMENT

§1. Definitions. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HIPAA; provided that PHI shall refer only to protected health information of Covered Entity unless otherwise stated.

§2. Compliance and Agents. Business Associate agrees that to the extent it has access to PHI, Business Associate will fully comply with the requirements of this Addendum with respect to such PHI. Business Associate will ensure that every agent, including a subcontractor, of Business Associate to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity will comply with the same restrictions and conditions as set forth in this Addendum. If Covered Entity is required by HIPAA to maintain a Notice of Privacy Practices, Covered Entity shall notify Business Associate of any limitations in such notice to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

§3. Use and Disclosure; Rights. Business Associate agrees that it shall not use or disclose PHI except as permitted under this Addendum, including Section 16 hereof, and in compliance with each applicable requirement of 45 CFR Section 164.504(e). Business Associate may use or disclose the PHI received or created by it, (a) to perform its obligations under this Addendum, (b) to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement, or (c) to provide data aggregation functions to Covered Entity as permitted by HIPAA. Further, Business associate may use the PHI received by it in its capacity as Business Associate, if necessary, to properly manage and administer its business or to carry out its legal responsibilities. Business Associate may disclose the PHI received by it in its capacity as Business Associate to properly manage and administer its business or to carry out its legal responsibilities if: (a) the disclosure is required by law, or (b) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

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

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

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

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

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

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

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

APPLICATION SERVICE PROVIDER AGREEMENT

Exhibit A

Business Associate Addendum (Continued)

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

§12. Compliance with ARRA. Covered Entity and Business Associate agree to comply with the amendments to HIPAA included in the American Recovery and Reinvestment Act of 2009 ("ARRA") (P.L. 111 5), including all privacy and security regulations issued under ARRA that apply to Business Associate as and when those regulations are effective.

§13. Term. This Addendum shall take effect on the effective date of the Services Agreement, and shall continue in effect unless and until either party terminates this Addendum or the Services Agreement.

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

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

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

§17. Survival. All representations, covenants, and agreements in or under this Addendum or any other documents executed in connection with the transactions contemplated by this Addendum, shall survive the execution, delivery, and performance of this Addendum and such other documents. The respective rights and obligations of Business Associate under Section 14 of this Addendum shall survive termination or expiration of this Addendum.

§18. Further Assurances; Conflicts. Each party shall in good faith execute, acknowledge or verify, and deliver any and all documents which may from time to time be reasonably requested by the other party to carry out the purpose and intent of this Addendum. The terms and conditions of this Addendum will override and control any conflicting term or condition of the Services Agreement. All non conflicting terms and conditions of the Service Agreement shall remain in full force and effect. Any ambiguity in this Addendum with respect to the Services Agreement shall be resolved in a manner that will permit Covered Entity to comply with HIPAA.

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

APPLICATION SERVICE PROVIDER AGREEMENT

Exhibit B
Service Level Agreement

This Service Level Agreement (the "SLA") defines the service levels provided by ZOLL in accordance with delivering its software as a hosted service pursuant to the Application Service Provider Agreement (the "ASP Agreement"), to which this SLA is attached as an exhibit. This SLA is effective upon ZOLL's acceptance of a signed copy of the ASP Agreement from Customer and receipt from Customer of all fees due and payable. Capitalized terms used but not defined herein shall have the same meanings as assigned to such terms in the ASP Agreement.

1 Service Overview

ZOLL's hosted services (the "Hosted Services") are defined as the service of hosting, on ZOLL's IT platform, the web based Software for use by Customer. ZOLL's IT platform includes the network connectivity, hardware systems, security components and management services supporting the Hosted Services. Specifically excluded from this SLA are the services, software and hardware provided by other third parties (such as cellular network carriers and mobile handset providers), and any other software, services or systems operating outside of ZOLL hosted infrastructure, including any software (including ZOLL's developed software) or systems operating on Customer's premises.

2 Service Deliverables**2.1 Service Deliverables**

2.1.1 Downtime. Downtime, expressed in minutes, is any time the Hosted Service is not accessible to Customer and Customer's users.

2.1.2 Planned Downtime. Planned Downtime is Downtime including scheduled periods where the Hosted Services may not be available in order for ZOLL to continue to bring the best possible service, features and performance to its customers. Planned Downtime includes, but is not limited to: 1) Standard Maintenance; and 2) Emergency Maintenance. Standard Maintenance is performed when upgrades or system updates need to be applied (i.e. standard software release, non-critical software updates). Emergency maintenance happens when there is a critical system update that needs to be applied quickly to avoid significant downtime (such as hardware patches that address server vulnerabilities or a critical software update). This maintenance will only be done as necessary and with notice to the Customer when possible.

Standard Maintenance Windows: Weekly, Monday and Wednesday between the hours of 7pm to 11pm Mountain Time. Notice will go out at least 24 hours in advance of the planned outage.

Emergency Maintenance Windows: As needed. Best efforts will be made to provide notice at least 30 minutes in advance of the planned outage.

2.1.3 Excused Downtime. Excused Downtime time is Downtime caused by: a) services, software or hardware provided by anyone other than ZOLL (such as the cellular network carrier or the mobile handset provider), b) software, services or systems operating outside of ZOLL hosted infrastructure, including any software (including ZOLL's developed software) or systems operating on Customer's premises; c) a Force Majeure event or a customer related action (e.g. a customer's failure to comply with its obligations under the Application Service Provider Agreement or use of the Hosted Services in ways that were not intended).

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

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

2.1.5 Unplanned Downtime Goal. ZOLL shall provide the Hosted Services such that there is less than **0.99%** of Unplanned Downtime in a calendar month.

2.1.6 Incident Monitoring and Reporting. Problems with the Hosted Services can be logged by Customer through the ZOLL support website at support@zoll.com or through the ZOLL's call center at 800-663-3911. An incident report will be created and escalated as appropriate.

STANDARD ZOLL DELIVERABLES:

Online Incident Reporting: 24x7 reporting through the ZOLL support site, support@zoll.com. Responses shall be provided within 24 hours during normal business hours.

Call Center Standard Support: Monday to Friday 6:00am to 6:00pm, Mountain Time.

2.2 Covered Services / Customer Content

2.2.1 Covered Services. The Hosted Services covered by the Unplanned Downtime Goal are those identified in the ASP Agreement as the ASP Services, that have been activated for Customer, and Customer has accepted and is using in the course of carrying out their normal business operations.

APPLICATION SERVICE PROVIDER AGREEMENT

Exhibit B**Service Level Agreement (Continued)**

2.2.2 Availability of Customer Content. It is Customer's responsibility to maintain any Customer Content that it requires for archival purposes or ongoing management of its operations. Unless specified otherwise in the ASP Agreement, ZOLL will store Customer Content, other than Inactive Data (as defined below), for [7] years (calculated from the date of creation of such Customer Content, or ZOLL's receipt of such Customer Content, whichever is later) in ZOLL's working data set. Upon the expiration of such [7]-year period, ZOLL will notify Customer in writing and will provide Customer the option, which Customer shall exercise by informing ZOLL in writing, within 30 days of receiving the notice, that either (a) Customer wishes to receive Customer Content in a ZOLL-provided tool that allows Customer to view, search and print such Customer Content, or (b) Customer will pay ZOLL, at ZOLL's then-current storage rates and upon ZOLL's then-current terms and conditions, to continue to store such Customer Content. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy all Customer Content in its possession or under its control. During the time ZOLL stores Customer Content for Customer hereunder, ZOLL will periodically identify Customer Content that has had no activity associated with it for at least 180 days ("Inactive Data") and will notify Customer in writing of its intent to remove the Inactive Data from ZOLL's working data set and destroy such data, unless Customer requests, in writing, within 30 days of receiving the notice from ZOLL, that either (a) Customer wishes to receive such Inactive Data in a ZOLL-provided tool that allows Customer to view, search and print such Inactive Data, or (b) Customer will pay ZOLL, at ZOLL's then-current storage rates and upon ZOLL's then-current terms and conditions, to continue to store such Inactive Data. If Customer fails to exercise one of the foregoing options within such 30-day period, ZOLL will have the right to destroy the applicable Inactive Data in its possession or under its control. Except for this Section 2.2.2, the terms of this SLA (including, without limitation, the Unplanned Downtime Goal) do not apply to Customer's access of Inactive Data.

2.3 Remedies

A "Service Credit" means a percentage of the monthly service fee to be credited to Customer (subject to Customer's written request therefor and ZOLL's verification thereof) for the service for which the Unplanned Downtime Goal is exceeded in a calendar month. For any calendar month where the aggregate total of Unplanned Downtime for a particular service exceeds 1%, ZOLL will provide a 10% Service Credit towards Customer's monthly service charge for the service that was affected; provided, that credit is requested by the Customer within 30 days of the end of the calendar month in which the Unplanned Downtime occurred and the Unplanned Downtime is verified by ZOLL.

The Service Credit will be applied to a future month's service invoice (typically two months later).

Customer service remedy disputes concerning Unplanned Downtime must be made in writing within 60 days from the Unplanned Downtime in dispute and include details on the nature of the outage and date and time of occurrence. Prior to issuance of Service Credits, the incident must be verified by ZOLL. Failure to submit a written request for Service Credit as noted above shall constitute a waiver of such Service Credits by Customer. Further, Service Credits shall not be issued if Customer is not current on all fees due and payable.

3 Term

The term of this SLA shall be coincident with the term of the ASP Agreement.

4 Other Conditions**4.1 General Terms & Conditions**

Terms and conditions on use of Hosted Services are contained in the ASP Agreement.

4.2 Modifications

Changes to this SLA may be made from time to time at ZOLL's sole discretion, but will not be made more than once in a six month period. Customer will be notified of any material changes to this SLA.

4.3 Limitations On Remedies.

The remedies of Section 2 of this SLA shall be Customer's sole and exclusive remedies with respect to ZOLL exceeding the Unplanned Downtime Goal.

APPLICATION SERVICE PROVIDER AGREEMENT

Exhibit C

Description of License Types

The license to install and use the Software shall be in accordance with the following license options. The Software may contain a software license management tool (a "**License Manager**") that regulates Customer's use of the Software. If so, all of the licensed activity described below must be subject to the control of the License Manager, and Customer may not install or use the Software in a manner that circumvents or interferes with the operation of the License Manager or any other technological measure that controls access to the Software.

'PPL' - Population License. Population License grants Customer the right to install the Software on an unlimited number of compatible personal computers or servers for use concurrently by an unlimited number of Customer users to manage a number of resources (i.e. crew members scheduled, vehicles tracked, etc.) which number of resources is limited by the number of licenses Customer has purchased. The license is not limited to any specifically identified resources or users but is limited by the total number of resource licenses that Customer has purchased as described above.