

K23-687

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

This Purchase Agreement ("Agreement") is made between ZOLL Medical Corporation, a Massachusetts corporation ("ZOLL"), and New Orleans EMS, headquartered at 2929 Earhart Boulevard, New Orleans, LA 70125 ("Customer"). ZOLL and the Customer agree to the following terms and conditions with respect to the purchase of ZOLL products ("Products") set forth in this Agreement. This Agreement will be effective upon the date of last signature ("Effective Date").

- 1) **Committed Volume Discount:** In consideration for the discount pricing set forth in Exhibit A:
 - a) Customer agrees to commit 100% of its ResQPOD Impedance Threshold Device (ITD) 16 business with ZOLL, and work with ZOLL as a sole source supplier for its ResQPOD ITD 16, accessories, and supplies.
- 2) **Co-Marketing Discount:** In consideration of the discount pricing set forth in Exhibit A, the Customer agrees to provide the following value-added marketing services on behalf of ZOLL Medical. Customers shall use good faith efforts to provide ZOLL with the following services from time to time:
 - a) The right to use the Customers' name in brochures for marketing purposes as a user of ZOLL products.
 - b) Use of the Customer as a reference site to other ZOLL customers or potential customers.
- 3) **Agreement Pricing:** Product pricing offered under the terms of this Agreement is set forth under Exhibit A: Agreement Pricing.
 - a) The original pricing set forth in this Agreement will be subject to annual increases in ZOLL's sole discretion and could be based upon supply chain changes, economic conditions, epidemics/pandemics and/or natural disasters. These annual price increase will not exceed the greater of (a) 4%, or (b) the sum of the annual average of the previous 12 months Producer Price Index (PPI) (change in final demand less foods, energy, and trade, unadjusted) published by the United States Department of Labor, Bureau of Labor Statistics plus 1.5 %. ZOLL will provide sixty (60) days' notice of any price increases.
 - b) ZOLL may, in its sole discretion, at any time or from time to time with thirty (30) days' prior written notification to the Customer, add Products or remove Products from Exhibit A. Exhibit A shall be deemed amended as of the date of the notice.
 - c) The Exhibit A pricing reflects certain discounts from ZOLL's standard list pricing in consideration for (i) the commitments made by the Customer described in Section 3 of this Agreement ("Commitments"), and (ii) the co-marketing efforts to be undertaken by the Customer as described in Section 4 ("Co-Marketing"). The Prices in Exhibit A are contingent upon the Customer fulfilling the Commitments and Co-Marketing.

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

- d) The maximum amount payable, per year, under this Agreement is seventy-four thousand dollars (\$74,000.00). This Agreement does not guarantee any amount of compensation except as specifically authorized by the Customer in accordance with the terms and conditions of this Agreement. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement in the current or successive fiscal years, and the Customer will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement provided that Products already procured by City under this Agreement are paid in full in accordance with LA Civ Code 2298.
- 4) **Commitment Performance:** Prior to the expiration of each fiscal/calendar year for the Customer during the term of this Agreement, the Parties shall meet to review the Customer's aggregate progress in meeting the applicable commitments listed in this Agreement. Failure to meet the commitments listed above may result in pricing changes or the termination of this Agreement for default.
- 5) **Terms of Payment:** Payment is due within thirty (30) days of the date on the invoice. Any amounts payable hereunder which remain unpaid after the due date shall be subject to a late charge equal to 1.5% per month from the due date until such amount is paid.
- 6) **Term of Agreement:** This Agreement shall expire three (3) years from the Effective Date.
- 7) **Termination:** Either party may terminate this Agreement by delivering not less than sixty (60) days' prior written notice to the non-terminating party.
- 8) **Termination for Cause:** The Customer may terminate this Agreement for cause by sending written notice to ZOLL. "Cause" includes without limitation any failure to perform any obligation or abide by any material condition, representation, or warranty in this Agreement, which remains uncured after thirty (30) days written notice to ZOLL, including without limitation any failure to comply with the requirements of the Customer's Disadvantaged Business Enterprise Program and any failure to comply with the provisions of City Code Section 2-1120 or requests of the Office of Inspector General that relate to this Agreement. If a termination for cause is subsequently challenged in a court of law, and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original, written notice for cause was sent to the challenging party; no further notice will be required.
- 9) **Confidentiality:** The parties shall hold in strictest confidence the terms of this Agreement and any information and material which is related to either the Customer or ZOLL's business or is designated by either the Customer or ZOLL as proprietary and confidential. It is understood that this confidentiality clause does not include information which: (i) is now or hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding. The Customer and ZOLL hereby covenant that each shall not disclose such information to any third party without prior written authorization of the other.

- 10) **Delivery and Risk of Loss:** Unless otherwise stated, all deliveries shall be F.O.B. shipping point, freight prepay & add. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.
- 11) **Controlling Terms:** This Agreement sets forth the terms for ZOLL to sell to the Customer the products contained herein. All sales made under this Agreement are expressly limited to the terms of this Agreement, including, but not limited to any conflicting written or oral representations made by either party. Any such representation shall be wholly inapplicable to any sale made pursuant to this Agreement and shall not be binding in any way on either party, unless mutually agreed and signed by the parties as an amendment to this Agreement.
- 12) **Credit Approval:** All shipments and deliveries shall at all times be subject to the approval of credit by ZOLL. ZOLL may at any time decline to make any shipment or delivery except upon receipt of payment or security or upon terms regarding credit or security satisfactory to ZOLL.
- 13) **Taxes & Fees:** The pricing contained herein does not include sales use, excise, or other similar taxes or any duties or customs charges, or any order processing fees. The Customer shall pay, in addition to the price, the amount of any present or future sales, excise or other similar tax or customs duty or charge applicable to the sale or use of the Equipment sold hereunder (except any tax based on the net income of ZOLL), and any order processing fees that ZOLL may apply from time to time. In lieu thereof the Customer may provide ZOLL with a tax exemption certificate acceptable to the taxing authorities.
- 14) **Warranty:** ZOLL warrants to the Customer that from the earlier of the date of installation or thirty (30) days after the date of shipment from ZOLL's facility, the Equipment (other than accessories and electrodes) will be free from defects in material and workmanship under normal use and service for the period of five (5) year's for R Series and Hospital Transport X Series equipment & one (1) year for out-of-hospital X Series equipment. Accessories and electrodes shall be warranted for ninety (90) days from the date of shipment. During such period ZOLL will, at no charge to the Customer, either repair or replace (at ZOLL's sole option) any part of the Equipment found by ZOLL to be defective in material or workmanship. If ZOLL's inspection detects no defects in material or workmanship, ZOLL's regular service charges shall apply. ZOLL shall not be responsible for any Equipment defect, failure of the Equipment to perform any specified function, or any other nonconformance of the Equipment caused by or attributable to:

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

(i) any modification of the Equipment by the Customer, unless such modification is made with the prior written approval of ZOLL, (ii) the use of the Equipment with any associated or complementary equipment accessory or software not specified by ZOLL, or (iii) any misuse or abuse of the Equipment, (iv) exposure of the Equipment to conditions beyond the environmental, power or operating constraints specified by ZOLL, or (v) installation or wiring of the Equipment other than in accordance with ZOLL's instructions. Warranty does not cover items subject to normal wear and burnout during use, including but not limited to lamps, fuses, batteries, cables, and accessories. The foregoing warranty does not apply to software included as part of the Equipment (including software embodied in read-only memory known as "firmware"). The foregoing warranty constitutes the exclusive remedy of the Customer and the exclusive liability of ZOLL for any breach of any warranty related to the Equipment supplied hereunder. THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND ZOLL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- 15) **Firmware Software License:** All firmware software ("Software") installed in the Equipment is licensed to the Customer pursuant to a non-exclusive limited license on the terms hereinafter set forth. The Customer may not copy, distribute, modify, translate, or adapt the Software, and may not disassemble or reverse compile the Software, or seek in any manner to discover, disclose, or use any proprietary algorithms, techniques or other confidential information contained therein. All rights in the Software remain the product of ZOLL, and the Customer shall have no right or interest therein except as expressly provided herein. Customer's right to use the Software may be terminated by ZOLL in the event of any failure to comply with the terms of this Agreement. The Customer may transfer the license conferred hereby only in connection with a transfer of the Equipment and may not retain any copies of the Software following such transfer. ZOLL warrants that the read-only memory or other media on which the Software is recorded will be free from defects in materials and workmanship for the period and on terms set forth in Section 13. The Customer understands that the Software is a complex and sophisticated software product, and no assurance can be given that operation of the Software will be uninterrupted or error-free, or that the Software will meet the Customer's requirements. Except as set forth in this section, ZOLL MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND IN PARTICULAR DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF A PARTICULAR PURPOSE WITH RESPECT THERETO. The Customer's exclusive remedy for any breach of warranty or defect relating to the Software shall be the repair or replacement of any defective read-only memory or other media so that it correctly reproduces the Software. This License applies only to ZOLL Software.
- 16) **Delays in Delivery:** ZOLL shall not be liable for any delay in the delivery of any part of the Equipment if such delay is due to any cause beyond the control of ZOLL including, but not limited to acts of God, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

actions, inability to obtain materials, components, manufacturing facilities or transportation or any other cause beyond the control of ZOLL. In addition, ZOLL shall not be liable for any delay in delivery caused by failure of the Customer to provide any necessary information in a timely manner. In the event of any such delay, the date of shipment or performance hereunder shall be extended to the period equal to the time lost by reason of such delay. In the event of such delay ZOLL may allocate available Equipment among its Customers on any reasonable and equitable basis. Delivery dates quoted under this Agreement are approximate only, and ZOLL shall not be liable for reasonable delays or for any delivery by ZOLL within a reasonable time after such dates.

- 17) **Limitations Of Liability:** IN NO EVENT SHALL ZOLL BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM ZOLL'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT OR THE FURNISHING, PERFORMANCE, OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD HERETO, WHETHER DUE TO A BREACH OF AGREEMENT, BREACH OF WARRANTY, THE NEGLIGENCE OF ZOLL, OR OTHERWISE.
- 18) **Patent Indemnity:** ZOLL shall, at its own expense, defend any suit that may be instituted against the Customer for alleged infringement of any United States patents or copyrights related to the parts of the Equipment or the Software manufactured by ZOLL, provided that: (i) such alleged infringement consists only in the use of such Equipment or Software by itself and not as a part of or in combination with any other devices or parts, (ii) the Customer gives ZOLL immediate notice in writing of any such suit and permits ZOLL, through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) the Customer gives ZOLL all requested information, assistance, and authority at ZOLL's expense, to enable ZOLL to defend such suit. In the case of a final award of damages for infringement in any such suit, ZOLL will pay such award, but it shall not be responsible for any settlement made without its written consent. This section states ZOLL's total responsibility and liability, and the Customer's sole remedy for any actual or alleged infringement of any patent by the Equipment or the Software or any part thereof provided hereunder. In no event shall ZOLL be liable for any indirect, special, or consequential damages resulting from any such infringement.
- 19) **Claims for Shortage:** Each shipment of Equipment shall be promptly examined by the Customer upon receipt thereof. The Customer shall inform ZOLL of any shortage in any shipment within ten (10) days of receipt of Equipment. If no such shortage is reported within the ten (10) day period, the shipment shall be conclusively deemed to have been complete.
- 20) **Returns and Cancellation:** The Customer shall obtain authorization from ZOLL prior to returning any of the Equipment. Once the Customer receives authorization from ZOLL to return a product for credit, the Customer shall be subject to a restocking charge of twenty percent (20%) of the original list purchase price, but not less than \$50.00 per product. Any change in delivery caused by the Customer that causes a delivery date greater than six (6) months from the

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

Customer's original order date shall constitute a new order for the affected Equipment in determining the appropriate list price.

- 21) **Applicable Law:** This Agreement shall be governed by the substantive laws of the State of Louisiana without regard to any choice of law provisions thereof.
- 22) **Compliance with Laws:** ZOLL represents that all goods and services delivered pursuant to the Agreement will be produced and supplied in compliance with all applicable state and federal laws and regulations, including the requirements of the *Fair Labor Standards Act of 1938*, as amended. The Customer shall be responsible for compliance with any federal, state, and local laws and regulations applicable to the installation or use of the Equipment furnished hereunder and will obtain any permits required for such installation and use.
- 23) **Non-Waiver of Default:** In the event of any default by the Customer, ZOLL may decline to make further shipments without in any way affecting its right under such order. If, despite any default by the Customer, ZOLL elects to continue to make shipments, its action shall not constitute a waiver of any default by the Customer or in any way affect ZOLL's legal remedies regarding any such default. No claim or right arising out of a breach of the Agreement by the Customer can be discharged in whole or in part by waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by ZOLL. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect nor constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.
- 24) **Assignment:** This Agreement may not be assigned by either party without the prior written consent of the other party, and any assignment without such consent shall be null and void.
- 25) **Title:** Title to right of possession of the products sold hereunder shall remain with ZOLL until ZOLL delivers the Products to the carrier and agrees to do all acts necessary to perfect and maintain such right and title in ZOLL. Failure of the Customer to pay the purchase price for any product when due shall give ZOLL the right, without liability, to repossess the Equipment, with or without notice, and to avail itself of any remedy provided by law.
- 26) **Audit and Other Oversight:** It is agreed that ZOLL will abide by all provisions of City Code Section 2-1120, including but not limited to City Code Section 2-1120(12), which requires ZOLL to provide the Office of Inspector General with documents and information, related to this Agreement, as requested. Failure to comply with such requests shall constitute a material breach

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

of the Agreement. In signing this Agreement, ZOLL agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

- 27) **Ownership Interest Disclosure:** At the City's request, ZOLL shall provide a sworn affidavit, listing all persons, natural, or artificial, with an ownership interest in ZOLL and stating that no other person holds an ownership interest in ZOLL via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If ZOLL fails to submit the required affidavits, the Customer may, after thirty (30) days' written notice to ZOLL, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.
- 28) **Subcontractor Reporting:** At the City's request, ZOLL shall provide a list of all persons, natural or artificial, who are retained by ZOLL at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with ZOLL's work for the Customer. In regard to any subcontractor proposed to be retained by ZOLL to perform work on the Agreement with the Customer, ZOLL must provide notice to the Customer within thirty (30) days of retaining said subcontractor. If ZOLL fails to submit the required lists and notices, after the City's reasonable request, the City may, after thirty (30) days' written notice to ZOLL, take such action as may be necessary to cause the suspension of any further payments until the required lists and notices are submitted.
- 29) **Convicted Felon Statement:** ZOLL complies with City Code Section 2-8(c). No ZOLL principal, member, or officer has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- 30) **Cost Recovery:** Remedies are available by either party herein, but neither party waives its right to avail itself of any remedy provided by law or in equity. In accordance with Section 2-8.1 of the City Code entitled, "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, ZOLL shall reimburse the City for prepaid Products that the City has not yet received. City shall not be reimbursed for any Products the City has received.
- 31) **Non-Solicitation Statement:** ZOLL represents that it has not employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. ZOLL has not paid, nor agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.
- 32) **Equal Employment Opportunity/Affirmative Action and Notice of Labor Rights:**

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

Seller shall, to the extent they apply, abide by (1) the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability; (2) 29 CFR Part 471, Appendix A to Subpart A, and (3) E-Verify.

- 33) **General:** This constitutes the entire agreement between Customer and ZOLL with respect to the purchase and sale of the Products described herein, and only representations or statements contained herein shall be binding upon ZOLL as a warranty or otherwise. Acceptance or acquiescence in the course of performance rendered pursuant hereto shall not be relevant to determine the meaning of this writing even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No addition to or modification of any of the terms and conditions specified herein shall be binding upon ZOLL unless made in writing and signed by a duly authorized representative of ZOLL. The terms and conditions specified shall prevail notwithstanding any variance from the terms and conditions of any order or other form submitted by Customer for the Products set forth in this Agreement.
- 34) **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.
- 35) **Electronic Signature and Delivery:** The Parties agree that a manually or electronically signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an originally, signed copy of this Agreement provided it is in compliance with La. R.S. § 9:2607(D). No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually or electronically signed copy of this Agreement.

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

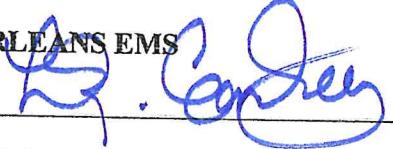
Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Purchasing Agreement as of the date appearing below their respective signatures.

ZOLL MEDICAL CORPORATION

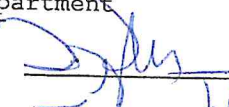
By: 
Name: Kurt Sandstrom
Title: Group VP, North American EMS Sales
Date: 8-11-23

NEW ORLEANS EMS

By: 
Name: LaToya Cantrell
Title: Mayor, City of New Orleans
Date: 8/29/23

By: _____
Name: Jean-Paul J. Morrell
Title: New Orleans City Council
President

Form and Legality Approved:
Law Department

By: 
Name: Tracy Hle

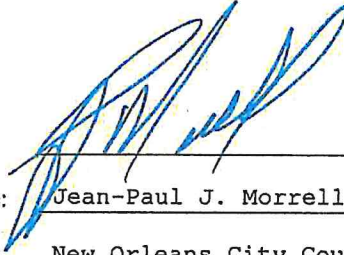
Please sign and return via e-mail, or mail to Contracts Department

E-MAIL: Contracts@zoll.com
MAIL : ZOLL Medical Corporation
Worldwide Headquarters
Attn.: Contracts Department
269 Mill Road
Chelmsford, MA 01824-4105

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

By: 

Name: Jean-Paul J. Morrell

Title: New Orleans City Council
President

Form and Legality Approved:
Law Department

By: _____

Name: _____

Please sign and return via e-mail, or mail to Contracts Department

E-MAIL: Contracts@zoll.com or nbranco@zoll.com
MAIL : ZOLL Medical Corporation
Worldwide Headquarters
Attn.: Contracts Department
269 Mill Road
Chelmsford, MA 01824-4105

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT

Brass# 4840; K23-687

Purchase Agreement
ResQPOD ITD 16
Agreement No. CW2236820

EXHIBIT A
Agreement Pricing

<i>Part number</i>	<i>Product Description</i>	<i>UOM</i>	<i>Agreement Price</i>
12-0822-000	ResQPOD ITD 16	EA	\$131.13

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ZOLL Medical Corporation
Rev. 6.0 PURCHASE AGREEMENT