



AED123 CUSTOMER AGREEMENT

This agreement (the “Agreement”) is entered into on _____ between AED123, LLC, with primary office at 3232 McKinney Ave, Suite 500, Dallas, Texas 75204 (“AED123”), and City of Forney (“Customer”) with primary office at 101 E Main St, Forney, TX 75126 (each, a “Party” and collectively the “Parties”).

AED Location(s): 23 AED Locations are listed in Appendix A

Start Date: 03/01/2023.

TERMS

1. **Services Provided.** For each AED Location, AED123 will provide the following services:
 - a. Visit AED Location monthly to check AED and address any issues
 - b. Replace AED batteries/pads as needed and per the device manufacturer’s guidelines
 - c. Monitor for recalls and changes to AED/CPR guidelines and update AED software when required
 - d. Ensure AED equipment and program are compliant with state and federal laws
 - e. Provide physician oversight, including post-use reporting and support
 - f. Notify EMS of AED placement and device usage (notification is NOT real-time; responder(s) MUST dial 911 for EMS)
 - g. Manage required record keeping, including retention of AED maintenance and use records
 - h. Maintain product liability, general liability, and umbrella insurance policies, and provide customer with certificates of insurance upon request
2. **CPR Training.** AED123 will not provide CPR training under the current Agreement. CPR training can be added to the provided services through a contract addendum.
- 3a. **Monthly Service Fee.** Customer will pay AED123 \$1,090 per month for services (the “Service Fee”). The first payment will be made on or about the Start Date, and subsequent payments will be made on or about the same day of each month thereafter, through recurring automated billing of the payment method on file.
- 3b. **Option for Annual Service Fee.** AED123 will waive one month’s Service Fee if Customer elects to pay Service Fee annually instead of monthly. In this case, Customer will pay AED123 a Service Fee of \$11,990 per year, with the first payment being made on or about the Start Date, and subsequent payments being made on or about the same day of each year thereafter, through recurring automated billing of the payment method on file.
4. **Customer Responsibility.** Customer shall:
 - a. Support AED123 in installing, moving, or removing any cabinet(s)
 - i. While AED123 prefers to hang cabinet(s) for Customer, some buildings have rules about who can attach items to the walls, and Customer agrees to assist AED123 in complying with such rules
 - ii. Customer is responsible for any building-specific costs associated with hanging a cabinet (e.g., fees for building staff to hang a cabinet, fees for holes in the wall after a cabinet is moved or removed, cost to repair any other damage to the building or structure)
 - b. Allow AED123 to have access to the cabinets and AEDs during normal business hours
 - c. Take reasonable measures to protect AEDs from abuse, tampering, and theft
 - d. Notify AED123 promptly if a cabinet or AED needs to be moved or was moved for any reason
 - e. Notify AED123 promptly if anyone notices that the device is emitting an audible chirp between AED123’s visits
 - f. Contact AED123 with any questions or concerns at 1-833-AED-1231 or service@aed123.com and submit any ideas, notices, or feedback to feedback@aed123.com

5. **Service Term.** This Agreement will be effective on the Start Date and for 36 months thereafter (the “Initial Term”). AED123 will not increase the Service Fee during the Initial Term (see Section 10).
6. **Renewal.** After the Initial Term, this Agreement shall automatically renew for successive 12-month periods (each a “Renewal Term”) unless Customer gives written notice to AED123 of Customer’s desire to cancel automatic renewal of this Agreement as provided in Section 7.
7. **Canceling Automatic Renewal.** Customer may cancel automatic renewal of this Agreement by giving written notice to AED123 of Customer’s decision to cancel automatic renewal at least 30 days prior to the end of the Initial Term or the Renewal Term (as the case may be). In such event, this Agreement shall not automatically renew.
8. **Termination without Cause.** If Customer desires to terminate service before the end of its Initial Term or any Renewal Term, it can do so, if it pays AED123 the unpaid Service Fees attributable to the remainder of that Initial Term or Renewal Term. If Customer chooses to terminate without cause during the period that is less than 30 days prior to the start of any Renewal Term, it shall pay AED123 the monthly or annual service fees associated with that Renewal Term.
9. **Termination for Cause.** Either Party may terminate this Agreement due to the other Party’s failure to comply with any provision of this Agreement, after it has 1) provided the other Party with notice of the intent to terminate based on the failure to comply, and 2) provided the other Party 30 days after such notice to cure the failure. If the issue remains uncured 30 days after such notice is provided, then the Party providing such notice will have the right to terminate this Agreement. If AED123 terminates this Agreement because the terms of this Agreement were breached by Customer, Customer will owe AED123 the unpaid monthly or annual Service Fees attributable to the remainder of the then current Initial Term or Renewal Term (as the case may be).
10. **Service Fee Adjustments.** The amount of the Service Fee shown above will not be adjusted during the Initial Term of this Agreement. AED123 may adjust the amount of the Service Fee to be charged and paid during any Renewal Term, provided that AED123 notifies Customer of such Service Fee adjustment at least 60 days before the start of such Renewal Term. Customer retains the option to cancel automatic renewal of this Agreement after receiving notification of a Service Fee adjustment (as outlined in Section 7).
11. **Late Fees.** Interest will accrue on Service Fees that are not paid when due, starting on the date the payment was due, at an interest rate equal to the lesser of 1.5% per month or the highest rate permissible by applicable law. AED123 will notify Customer if the payment method on file is declined; AED123 will not assess a late fee in situations where the payment method on file is declined and Customer provides a valid payment method within 14 days of such notice.
12. **Post Termination of Agreement.** Upon termination of this Agreement, AED123 will recover any AEDs, cabinets, and other equipment that it owns from Customer’s Asset Location(s). Customer agrees to provide AED123 with access to Customer’s premises and to cooperate with AED123 in the removal of such equipment. If Customer has previously vacated any Asset Location(s), either voluntarily or after an eviction, then Customer is responsible for returning to AED123 any AEDs, cabinets, and other equipment that AED123 owns.
13. **Marketing.** Customer has the right to publicize that it has deployed an AED through AED123, and AED123 has the right to include Customer’s name and logo in a section on its website listing its customers.
14. **Indemnification:** Each Party agrees to indemnify, defend, and hold harmless the other party from and against any loss, cost, or damage of any kind (including reasonable outside attorneys’ fees) to the extent the loss, cost, or damage arose out of its breach of this Agreement, and/or its negligence or willful misconduct.
- 15a. **LIMITATION OF LIABILITY. WHILE NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES THE LIABILITY OF AED123 FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS GROSS NEGLIGENCE, FRAUD, OR FRAUDULENT MISREPRESENTATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL,**

INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT ANY PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- 15b. **AGGREGATE LIABILITY.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL SERVICE FEES FOR THE INITIAL TERM.
16. **Governing Law.** This Agreement will be governed by the laws of the State of Texas.
17. **Choice of Forum.** Each Party irrevocably and unconditionally agrees that all disputes arising out of or relating to this Agreement shall be brought in the US District Court for the Northern District of Texas or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Dallas County, Texas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
18. **Mediation.** If any dispute arises between the Parties with respect to this Agreement, the Parties acknowledge and agree that prior to initiating any litigation regarding such dispute, they shall submit the dispute to a mutually agreeable mediator for purposes of conducting non-binding mediation to resolve the dispute without the necessity of litigation. The mediation shall be conducted in Dallas, Texas unless otherwise agreed to by the parties.
19. **Disclaimer:** To the fullest extent permitted by applicable law, AED123 disclaims all express and implied warranties, oral or written, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, noninfringement and any warranties arising from course of dealing, course of performance or usage of the trade.
20. **Entire Agreement.** This Agreement sets forth the full and complete understanding of the Parties, and supersedes all prior agreements, whether made orally or in writing. This Agreement is not cancelable except as provided herein.
21. **Amendment.** No amendment or modification of this Agreement shall be effective unless set forth in writing and agreed to by both Parties. However, AED123 may determine from time-to-time that this Agreement requires amendment to address current laws, future laws, or other concerns. As such, AED123 reserves the right to unilaterally amend this Agreement by giving at least 30 days' notice to Customer of such amendment and its effective date. If Customer is unwilling for this Agreement to continue with any such amendment, Customer may terminate this Agreement by giving notice to AED123 no later than the effective date of the amendment. If Customer does not provide such notice to AED123 before the effective date of the amendment, then Customer will be deemed to have agreed to the amendment, and the amendment will take effect on the effective date.
22. **Severability.** If any clause or provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, then such clause or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be given full force and effect.
23. **Assignment.** This agreement is binding upon AED123, Customer, and their respective heirs, personal representatives, successors, and assigns. While AED123 does not foresee an acquisition, AED123 may assign this Agreement to an acquiring entity. Any assignment by Customer will require AED123's written consent, which will not be withheld unreasonably.

24. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
25. **No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
26. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in this Agreement, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
27. **Electronic signatures.** Each Party agrees that an electronic signature (e.g., via HelloSign or a .pdf editor) is a legal representation of a manual signature, and electronic signatures of the Parties included in this Agreement have the same force and effect as manual signatures.
28. **Survival.** The following Sections shall survive termination or expiration of this Agreement: 4a, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date and year first written above by their respective duly authorized officers.

AED123, LLC

Signature: _____
Bobby Wehmeyer, Founder & CEO

City of Forney

Signature: _____

Name: _____

Title: _____

101 E Main Street Forney, TX 75126	Exact Location TBD	LIFEPAK CR2 AED In Cabinet	Customer	\$44
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