



LAERDAL MEDICAL CORPORATION
("LAERDAL")

Subscription:
Turnkey SimCapture®
Cloud Subscription Service

Polk County Fire Rescue		
	Customer Contact Information:	Billing Contact Information: (if different from Customer contact)
Attention:	David Evans	Holly Newton
Address:	330 W Church Street	1295 Brice Blvd
City, State/Province, Zip/Post Code:	Bartow, FL 33830	Bartow, FL 33830
Phone:	863-344-2854	863-534-5604
Fax:		
Email:	davidevans@polk-county.net	hollynewton@polk-county.net

Initial quote: Q-1062369

This MSA covers all future quotes for Turnkey SimCapture® Cloud Subscription Service and will take precedence over any previous MSA.

Start Date	The date of completion of Implementation Service
Initial Term (Minimum period of 60 months commencing on Start Date)	60 Months
Payment Schedule	5-annual payments

1. Subscription Terms. Each Order Form is governed by and incorporates the following documents collectively referred to as the Agreement.
 - (i) Order Form and
 - (ii) LAERDAL Service Terms including all Exhibits. Exhibits B and C will require customer signature later in the Implementation process.

All capitalized terms used herein have the meanings stated in the Agreement.

2. Payment Terms.

- 2.1 All Subscription Fees and Hardware and Implementation Service Fees are invoiced at time of shipment. All invoices are due within the Customer's established credit terms from date of invoice. (All payments due are in Local currency).

2.2 Purchase Orders.

- a. Required. If Customer enters into an Order Form and requires a purchase order number on its invoice(s), then Customer will inform LAERDAL in advance and will issue a purchase order number to LAERDAL prior to commencement of the Subscription Service. LAERDAL will not be obligated to commence the Service prior to receipt of the purchase order number. Any terms and conditions (other than the purchase order number) contained in a Customer's purchase order will not apply to this Agreement and will be considered null and void. The terms of this Agreement will apply to any customer purchase order.
- b. Not Required. If Customer waives the purchase order requirement, then: (a) LAERDAL will invoice Customer without a purchase order; and (b) Customer agrees to pay invoices without a purchase order number.

- 2.3 Risk Upon Shipment. The grant of license to the Subscription Service to Customer commences upon the Start Date. The transfer of title to the hardware components of the Service occurs upon delivery of the hardware components to location designated by Customer.
3. Additional Order Form(s). Additional hardware and/or Services may be purchased by Customer and LAERDAL entering into additional Order Forms which shall be subject to the LAERDAL Service Terms including Exhibits.
4. Each party agrees to be bound by the terms of this Agreement.

LAERDAL SERVICE TERMS

DEFINITIONS

"Affiliate" includes in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

"Authorized User" means those individual users of the Service limited to Customer, its employees, faculty, students and others participating in Customer's simulation training activities all of whom are expressly authorized by Customer to use the Service.

"Order Form" means the first pages of this Agreement noted as Subscription Order Form.

"CFE" means the Customer furnished equipment and services defined in Exhibit B necessary for the Service.

"Customer Data" means any Customer data, information or material submitted to LAERDAL or inputted by the Customer or by any Authorized User into the Service for the purpose of using the Service or facilitating the Customer's use of the Service or any Output as defined below.

"Data Protection Legislation" means the General Data Protection Regulation EU 679/2016, California Consumer Privacy Act, Cal. Civil Code § 1798.100 *et seq.* and all federal, state and local legislation which applies to a party relating to the use of personal data.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organizational measures is as defined in the Data Protection Legislation.

"Customer Representative" means a person duly authorized by the Customer to act on its behalf for the purposes of this Agreement and notified to LAERDAL as such by written notice.

"Documentation" means the then current explanatory and informational materials concerning the Service, in printed or electronic format, and which LAERDAL has released for general distribution to its customers.

"Effective Date" means the date specified as such in the Order Form.

"Hardware Fee" means the fee listed as such on the Order Form in respect of the hardware supplied by LAERDAL for use with the Service.

"Implementation Service" means the implementation and training services detailed in Exhibits A, B and C.

"Implementation Service Fee" means the fee listed as such on the Order Form in respect of the Implementation Service Fee.

"Initial Term" means the initial term of this Agreement as set forth on the Order Form commencing from the Start Date.

"Intellectual Property Rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including moral rights and similar rights.

"Laerdal Hardware Form Factor(s)" means the LAERDAL owned equipment found on the Order Form.

"Normal Working Hours" means 8:00AM – 8:00PM EST Mon- Fri

"Output" means the results generated through use of the Subscription Service.

"Parties" means the Customer and LAERDAL.

"Renewal Term" means any additional periods of this Agreement after the Initial Term as described in Section 9.1 being a period of twelve (12) months commencing on an anniversary of the Start Date.

"Service" means the Subscription Service (including the support and maintenance service set out in the SimCapture milestones) and the Implementation Service, as may be modified by LAERDAL from time to time.

"SimCapture" or **"SimCapture Subscription Software"** mean the online software applications used or made available by LAERDAL to provide the Subscription Service including any enhancements, updates or new versions.

"Start Date" means the date by which Laerdal has completed the Implementation Service or one hundred and eighty (180) days from the Effective Date, whichever is the earlier.

"Subscription Fee" means the annual fees for the Subscription Service which are set in the Order Form for the Initial Term and are thereafter adjusted on an annual basis for any Renewal Term in accordance with Clause 3.2 of this Agreement.

"Subscription Service" means (i) the online software application subscription service including the SimCapture Subscription Software offered by LAERDAL listed on the Order Form to the Customer via the Web Site together with the use by the Customer of the Laerdal Hardware Form Factor(s) and (ii) the support and maintenance services detailed in the SimCapture milestones which commence on completion of the Implementation Service.

"Term" has the meaning given to it in Clause 9.1 (being the Initial Term together with any subsequent Renewal Term).

"Third-Party Service" any data, information or material submitted or provided by LAERDAL via the Service authored or provided by or from any third party.

"Electronic Storage Allotment" means the maximum electronic storage allotment provided to Customer for the storage and hosting of Customer's electronic files as part of the Subscription Service provided hereunder.

"Web Site" means the web site(s) through which the Subscription Service is made available to Customer or any other website notified to the Customer by LAERDAL from time to time.

1. SERVICE

1.1 Access to and Use of the Service. Subject to the terms of this Agreement, LAERDAL will provide the Implementation Service and the Subscription Service and LAERDAL hereby grants to Customer the non-exclusive, non-transferable right to use and access (and to permit Authorized Users to use and access) the Subscription Service via a designated Web Site and the Laerdal Hardware Form Factor(s) solely for the benefit of Customer's own training purposes in simulated environments or using simulation technologies PROVIDED ALWAYS that the use of the Subscription Service will not involve actual patients in any clinical setting. Customer acknowledges that the title and ownership of the Laerdal Hardware Form Factor(s) will remain with Laerdal at all times.

1.2 Hosting and Electronic Storage Allotment. LAERDAL will, as part of the Service, provide the Customer with the Subscription Service. Hosting fees for the Subscription Service are included in the Subscription Fee unless the Customer requires a dedicated server due to the size of the installation or for other purposes. In the event that Customer requires a dedicated server, additional hosting fees will be applicable for the Subscription Service as detailed in the Order Form. The Electronic Storage Allotment for Customer is 20 TB on the cloud.

1.3 **Authorized Users.** Customer must ensure that only Authorized Users have access to and use of the Service. If the Customer is notified or becomes aware that an unauthorized user and/or third party has gained access to or used the Service, Customer shall promptly notify LAERDAL. Customer shall take all reasonable steps to ensure that no Authorized Users shall take any action in breach of this Agreement. Such steps shall include, but shall not be limited to, imposing password restrictions on use of the Service, securing the Customer's system, and administering and monitoring use of the Service. Customer shall ensure that all Authorized Users comply with this Agreement, and shall be liable for all acts or omissions by such Authorized Users.

1.4 **Reporting.** Customer shall promptly report to LAERDAL any actual or suspected violation of Clause 1.1, 1.2 or 1.3 above and shall take such further steps as may reasonably be requested by LAERDAL to prevent or remedy any such violation.

1.5 **Restrictions.** Customer shall not (a) use the Service in any manner which is not expressly authorized by this Agreement or which breaches any applicable law; (b) copy or reproduce any SimCapture Subscription Software, in whole or in part (excluding reports generated by the Service Output functions); (c) modify, translate or create derivative works of any SimCapture Subscription Software, either directly or through any third party, including but not limited to translated or localized releases of the Product; (d) reverse engineer, decompile, disassemble or otherwise reduce any **Sim Capture** Subscription Software to source code form; (e) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the Subscription Service or Customer's right to access and use SimCapture Subscription Software; or (f) remove or modify any copyright, trademark or other proprietary notice of LAERDAL or its licensors on the Output or contained within SimCapture Subscription Software; (g) provide access to the Hardware or SimCapture to any party other than Authorized Users; or (h) access the Hardware or SimCapture in order to (A) build a competitive product or service, or (B) copy any ideas, features or functions. Customer acknowledges that the Service is a training tool and shall not use the Service to diagnose, treat, cure, mitigate, or prevent a disease or condition of a patient.

1.6 **Cooperation.** Customer acknowledges that the rendering of the Implementation Services and the Subscription Services will require the good faith cooperation of Customer. Therefore, Customer agrees to provide all information reasonably requested by LAERDAL in order to perform the Implementation Services and the Subscription Services. LAERDAL may rely upon all decisions and approvals from Customer, and LAERDAL shall not be liable for any matter as a result of following Customer's specific instructions.

2. INTELLECTUAL PROPERTY RIGHTS AND RESTRICTIONS

Ownership of Intellectual Property. The Customer acknowledges and agrees that the Subscription Service and all SimCapture Subscription Software used hereunder is and shall at all times remain, the sole and exclusive property of LAERDAL or its licensors, including, without limitation, all worldwide Intellectual Property Rights embodied in, related to, or represented by, the Service or any version thereof. Customer may from time to time provide suggestions, comments, improvements, enhancements, or other feedback to LAERDAL regarding the Hardware or SimCapture ("Feedback"). Feedback is and shall be given entirely voluntarily. LAERDAL shall be free to use, disclose, reproduce, modify, adapt, creative derivative works from, license, sublicense (through multiple tiers) or otherwise distribute, and exploit the Feedback provided to it as it sees fit for any purpose (for its own benefit and for the benefit of others) on a worldwide, royalty-free basis, in perpetuity, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise

3. FEES

3.1 **Fees.** Except as expressly set forth in the Order Form, Customer will pay all the Hardware Fee within the terms on their invoice and shall pay the Implementation Fee and initial Subscription Fee for access to and use of the Subscription Service within the terms on their invoice. Subsequent Subscription Fee(s) for any Renewal Term(s) thereafter shall be due on each anniversary of the Start Date. Each Subscription Fee for the Initial Term or any subsequent Renewal Term will be non-refundable and non-cancellable except as provided in Clause 5 of these Service Terms.

3.2 **Increases to Subscription Fee.** LAERDAL may increase the Subscription Fee and/or the rates in respect of any Renewal Term by giving at least three (3) months' written notice to the Customer prior to the expiry of the Initial Term or the then current Renewal Term, as applicable.

3.3 **Late payments.** If Customer fails to make any payment due to LAERDAL under this Agreement by the due date for payment, then without limiting LAERDAL's remedies under Section 9.2, the Customer shall pay interest on the overdue amount at the rate of 1.5% per month (or the highest rate permitted by law if less) above the base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amount. LAERDAL may also suspend all or any part of the Service pending receipt of payment. If Customer disputes any invoice, it must notify LAERDAL in writing regarding the nature of the dispute prior to the due date on such invoice and pay all undisputed fees. Customer shall be responsible for all costs of collection for LAERDAL to collect overdue amounts, including attorney's fees and expenses.

3.4 **Taxes.** Customer is responsible for any taxes related to its purchase of the Service and the Customer will pay the Subscription Fee without any reduction for taxes. If LAERDAL is obligated to collect or pay any such taxes, the taxes shall be invoiced to Customer unless Customer provides LAERDAL with a valid tax exemption certificate by the appropriate taxing authority. If Customer is required by law to withhold any taxes from its payments to LAERDAL, Customer must provide LAERDAL with an official tax receipt or other appropriate documentation to support such withholding.

4. CUSTOMER DATA

4.1 **Customer Data Ownership and Warranty.** LAERDAL and Customer acknowledge that all Customer Data entered and used with the Service is and shall remain the property of Customer and nothing in this Agreement shall restrict Customer's use of its Customer Data. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. LAERDAL shall have no responsibility for the accuracy, quality, legality, reliability, integrity or appropriateness of Customer Data that is not personal data. LAERDAL and its licensors are not liable or responsible for any results generated using Customer Data or Output. Customer represents and warrants that (a) it has the authority and right to transmit Customer Data to LAERDAL and to grant the license under Section 4.2, and has collected and processed all Customer Data in compliance with all laws, rules and regulations, including Data Protection Legislation; and (b) the use of Customer Data will not infringe the intellectual property rights or other proprietary rights of any third party.

4.2 License to LAERDAL. Customer grants LAERDAL and its Affiliates a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to use display, transmit, modify and prepare derivative works of the aggregated or de-identified Customer Data and Output in any media. LAERDAL may aggregate and/or de-identify Customer meta-data with similar data from other customers and third parties to create anonymous or aggregated meta-data that does not identify any individual or the metrics or information pertaining to any individual or its domain ("Aggregated Meta-Data"). LAERDAL will own all rights to Aggregated Meta-Data, and has the irrevocable right to maintain, store, use and disclose Aggregated Meta-Data.

4.3 Use of Third-Party Service. LAERDAL shall have no responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of Third-Party Service and LAERDAL shall not be responsible or liable for the deletion, correction, destruction, damage, or loss of any Third-Party Service. Customer acknowledges that use of any Third-Party Service generated, obtained or acquired through the use of the Services is at Customer's sole risk and discretion. LAERDAL and its licensors are not liable or responsible for any results generated using Third-Party Service.

4.4 Confidentiality. Each Party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other party's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event using less than reasonable efforts. "**Confidential Information**" means information that a disclosing party considers to be confidential, including but not limited to business and technical information, marketing plans, research, designs, plans, methods, techniques, processes and know-how, whether tangible or intangible and whether or not stored, compiled or memorialized physically, electronically, graphically or in writing. Confidential Information shall not include information which: (i) is, or as of the time of its disclosure or thereafter, becomes part of the public domain through a source other than the receiving party; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy. The parties acknowledge that the Service and any quotes and pricing, including the Order Form provided to Customer shall be treated as Confidential Information.

4.5 Data protection.

SimCapture is not intended to be used or to ever be used to store protected health information or other patient data. Customer instructs LAERDAL to process, transmit, store or disclose the Customer Data in order to provide the Service. Customer is solely responsible for determining the suitability of the Service for the Customer's needs and for complying with any applicable data privacy and data protection regulations, laws or conventions applicable to the Customer Data and the Customer's use of the Service. LAERDAL may access Customer Data solely to respond to service or technical problems or at the Customer's request.

5. LAERDAL'S OBLIGATIONS

5.1 General. LAERDAL undertakes that the Service will be performed substantially in accordance with the Documentation.

5.2 Availability. Subject to scheduled outages for maintenance and other announced downtime, LAERDAL shall use commercially reasonable efforts to make the Service available for use by Authorized Users during the Term but makes no guarantee of continuous availability or uninterrupted use of the Service. LAERDAL's sole obligation and Customer's exclusive remedy for any unavailability of the Service for more than twenty-four (24) consecutive hours is limited to (a) an extension of the Term for a period of time equal to the period of time the Service was unavailable; or (b) a credit by LAERDAL of an amount equal to the prorated Subscription Fee paid by Customer for the outage period. The remedies available to Customer in the preceding sentence are conditional upon Customer notifying LAERDAL of the unavailability of the Service in writing immediately upon becoming aware of such Service outage and providing LAERDAL with sufficient documentation of the Service outage to enable LAERDAL to reproduce and verify the same.

5.3 Limitation. LAERDAL's undertaking in clause 5.1 above shall not be applicable in the event that any outage or Service failure arises from (a) any modification to the Service not made by or at the direction of LAERDAL (b) use of the Service in a manner not described in the Documentation or this Agreement, (c) use of the Service in any unlawful, improper or inappropriate manner or for any unlawful, improper or inappropriate purpose, (d) as a result of the negligence or intentional misconduct of Customer, (e) any data, equipment, software, service or resource not provided by LAERDAL or (f) any interruptions of access to the Subscription Service due to poor network connectivity.

5.4 Remedies for Loss of Customer Data. In the event that there is a loss or corruption of Customer Data directly caused by use of or access to the Service, LAERDAL will use commercially reasonable efforts to restore or correct such Customer data. If LAERDAL is unable to correct or restore such data, Customer's sole and exclusive remedy shall be to terminate this Agreement and upon such termination LAERDAL shall refund to Customer a pro-rated portion of the Subscription Fee.

5.5 Customer Security. For hardware and related systems located on or accessible from Customer's premises, Customer is solely responsible for implementing adequate firewall, password and other security measures to protect Customer's systems, data and applications from unwanted intrusion, whether over the Internet or by other means. In the event any unauthorized access to the Subscription Services is suspected by Customer, it shall immediately notify LAERDAL in writing and fully cooperate with LAERDAL in order to investigate and remediate such access.

5.6 Dependencies. Customer acknowledges and agrees that (a) the Service requires access to and use of the Internet and that the Internet is an unregulated, public network over which LAERDAL exerts no control and (b) LAERDAL has no responsibility for operating and maintaining Customer's servers, personal computers or other devices and their connection to the Internet to access and use the Service.

6. CUSTOMER OBLIGATIONS

6.1 Access. The Customer shall provide LAERDAL with all necessary access to Customer site, information and cooperation as may be required by LAERDAL in order to provide the Services including but not limited to Customer Data, security access information and Implementation Services as detailed in the SimCapture milestones. Customer is responsible to provide LAERDAL with all floor plans and to provide direct communication with any pertinent Customer parties, which may include but not be limited to, the Simulation Coordinator, IT/Networking Specialist and Facility Services. Customer shall perform all its obligations under this Agreement in a timely and efficient manner. The Customer is responsible to receive, unload and take ownership of equipment at Customer site and move said equipment to Implementation rooms per dates established in Exhibit B.

6.2 Applicable laws and permits. The Customer shall comply with all applicable laws and regulations with respect to its activities under this Agreement and shall maintain all necessary licenses, consents and permissions necessary for LAERDAL and its subcontractors to perform their obligations under this Agreement.

6.3 Network. Customer shall ensure that its network and systems comply with the relevant specification provided by LAERDAL in Exhibit B as amended from time to time.

6.4. Connections. Customer shall, to the extent permitted by law, be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to LAERDAL's data centers and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7. LIMITATION OF LIABILITY

7.1 Except as expressly provided in this Agreement, Customer assumes sole responsibility for the Customer Data, the Output and for conclusions drawn from such use. LAERDAL has no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to LAERDAL by the Customer in connection with the Service or any actions taken by LAERDAL at the Customer's direction.

7.2 The warranties to any hardware supplied under this Agreement are those made by the applicable manufacturers only. Except as stated expressly in this section 7 and to the maximum extent permitted by applicable law, LAERDAL and its licensors do not make any warranty of any kind, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use, and non-infringement. LAERDAL and its licensors do not warrant that the operation of the Hardware provided hereunder will be error-free or uninterrupted. The hardware and the Subscription Service are not designed, manufactured, or intended for high risk activities, such as life support systems where the use or failure of the Service could lead to death or personal injury.

7.3 All warranties, representations, conditions and all other terms of any kind whatsoever implied by law are to the fullest extent permitted by applicable law, excluded from this Agreement.

7.4 Except for a breach of a party's intellectual property rights, neither party shall be liable under this Agreement for any indirect, special, incidental, consequential, exemplary, or punitive damages, including but not limited to lost profits, business interruption, loss of goodwill or any such damages, under any theory of liability, even if the party knew or should have known that such damages were possible and even if direct damages do not satisfy a remedy. LAERDAL and its licensors' total aggregate liability in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance of this Agreement shall be limited to the Subscription Fee paid during the 12 months immediately preceding the date on which the event giving rise to such liability occurred.

8. INFRINGEMENT INDEMNIFICATION

8.1 Obligation to Indemnify. LAERDAL shall defend Customer against any claim that the Customer's use of the Service in accordance with this Agreement infringes any patent effective as of the Effective Date, copyright, trade mark or database right and shall indemnify the Customer for all damages, settlements, costs and expenses (including reasonable attorneys' fees) awarded against Customer in judgment or settlement of such claims provided that Customer (i) promptly notifies LAERDAL in writing of such suit, claim or proceeding, (ii) gives LAERDAL reasonable information, assistance and cooperation required to defend such suit, claim or proceeding, and (iii) allows LAERDAL sole authority to defend or settle the claim. Customer may be represented in the defense of any such claim, at Customer's expense, by counsel of Customer's selection. LAERDAL shall have no liability for settlements made or costs incurred without its express written consent.

8.2 Relief. In defense or settlement of any claim against Customer's use of the Service by reason of infringement or violation of any patent, copyright, trademark or trade secret, LAERDAL shall have the right, at its option, to do one of the following: (i) procure for Customer the right to continue to use the Service as provided in this Agreement, (ii) replace or modify the Service so that it becomes non-infringing (so long as the functionality of the Service is not materially impaired), or (iii) if neither of the preceding clauses (i) and (ii) is reasonably practicable, terminate this Agreement and refund to Customer a pro-rated portion of the Subscription Fee.

8.3 Exclusions. The provisions of Clause 8.1 notwithstanding, LAERDAL shall not have any liability to Customer, and to the extent that any claim is based upon (i) use of the Service in conjunction with any data (including Third-Party Service), equipment, service, software or resource not provided by LAERDAL, where the Service alone would not be infringing or otherwise be the subject of the claim, (ii) any modification to the Service not made by or at the direction of LAERDAL (iii) use of the Service in any unlawful manner or in any manner not authorized under this Agreement, or (iv) any claim of infringement or violation of any patent, copyright, trademark or trade secret in which Customer has a pecuniary or other material interest, or (v) any portion of the Service which LAERDAL has designed in accordance with specifications provided by Customer.

8.4 Exclusive Remedy. The indemnification remedies set forth in this Clause 8 shall constitute the exclusive remedies of Customer and the sole liability of LAERDAL with respect to claims of intellectual property infringement or violation.

8.5 Customer Indemnification. Customer shall defend LAERDAL against any claim regarding the Customer Data or Customer's use of the Subscription Service (except to the extent caused by a breach of this Agreement by LAERDAL) and shall indemnify LAERDAL for all damages, settlements, costs and expenses (including reasonable attorneys' fees) awarded against LAERDAL in judgment or settlement of such claims.

9. TERMS AND TERMINATION

9.1 Term. Unless earlier terminated pursuant to Section 9.2, this Agreement shall remain in effect from the Effective Date and continue until the end of the Initial Term. After the Initial Term, upon mutual agreement of the parties, this Agreement shall be renewed for an additional period mutually agreed upon by the parties unless terminated earlier by either party pursuant to Section 9.2.

9.2 Termination. Either party may terminate this Agreement by providing sixty (60) days written notice to the other party after the first twelve (12) months of the Agreement have elapsed, or (b) if the other party commits a material breach of this Agreement which is not cured within thirty (30) days after written notice thereof is given by the non-defaulting party. Either party shall also have the right to terminate this Agreement upon notice to the other if the

other party: (a) terminates or ceases operating its business in the normal course; (b) becomes subject to any bankruptcy or insolvency proceeding; (c) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; or (d) has wound up liquidated, voluntarily or otherwise, only, in the case of (b) and (c), above, if the condition has not been cured within sixty (60) days.

9.3 **Effect of Termination.** Upon any termination of this Agreement: (a) Customer shall, and shall cause all Authorized Users to, immediately cease using the Service; (b) LAERDAL may immediately deactivate Customer's account; (c) all outstanding payments to LAERDAL shall promptly be paid in full; (d) customer shall return all Laerdal owned equipment; and (e) following the expiration of ninety (90) days after the termination date, LAERDAL may destroy Customer's account and all related data, provided that upon Customer's written request to LAERDAL received by LAERDAL no later than thirty (30) days from the effective date of such termination, LAERDAL shall permit Customer temporary access to the Service for a period not to exceed five (5) days and for the sole purpose of permitting Customer to retrieve any Customer data accessible through the Service.

9.4 **Survival.** The parties' rights and obligations under Sections 1, 2, 4, 7, 8, 9, and 10, as well as any obligations to make payments of fees and other amounts accrued prior to Termination, shall survive any Termination of this Agreement.

10. GENERAL PROVISIONS

10.1 **Publicity.** From time to time LAERDAL and/or Customer may develop statements regarding Customer's use of the Service and the relationship between the Parties. Either Party, subject to the prior approval of the other Party, may use such Statements. In addition, Customer may cite that LAERDAL is the source of the Service in any publication that reports the use of the Service and LAERDAL may cite Customer as a user of the Service without prior consent.

10.2 **Force Majeure.** Except for the obligation to make payments, neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed Party: (a) gives the other Party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If LAERDAL is unable to provide the Service for a period of thirty (30) consecutive days as a result of a continuing force majeure event, Customer may cancel the affected Service(s).

10.3 **Dispute Resolution; Choice of Law.** If a dispute arises between the Parties to this Agreement relating to the interpretation or performance of this Agreement or the grounds of Termination thereof, the Parties agree to first hold a meeting, attended by individuals with decision making authority, regarding the dispute, to attempt to negotiate in good faith a resolution prior to pursuing other remedies. If within thirty (30) days after such meeting, the Parties have not succeeded in resolving the dispute, either Party may protect its interests by any lawful means available to it. Any dispute arising under or in connection with this Agreement or related to any matter that is the subject of this Agreement shall be interpreted under the laws of and subject to the exclusive jurisdiction of the County of New York in the State of New York and each party consents to the exclusive jurisdiction and venue of the courts located in the State of New York.

10.4 **Assignment.** Neither this Agreement or the rights granted hereunder shall be assigned or transferred by Customer without the prior written consent of LAERDAL, such consent not to be unreasonably withheld, and any attempted transfer without such consent shall be void and have no force or effect. LAERDAL may assign this Agreement, in whole or in part, upon written notice to Customer. Without limiting the generality of the foregoing, LAERDAL may fulfill any of its obligations under this Agreement by engaging the service of any independent third party or Affiliate, provided LAERDAL remains responsible for such performance. For purposes of this Clause, a merger, acquisition or change of control of Customer shall be deemed to be an assignment. This Agreement shall inure to the benefit of the parties and their permitted successors and assigns.

10.5 **Amendments; Waivers.** This Agreement may be amended or modified only by a writing signed by both Parties. Any waiver by a Party of any breach of any provision of this Agreement by the other Party must be in writing to be effective and shall not constitute a waiver of any subsequent breach of the same or any other provision.

10.6 Change Management: Change management

10.6.1 LAERDAL's Subscription Fee and Implementation Service Fee is based on the allocation of its personnel to perform the Services or hardware purchased. If there are any changes due to:

- any delays or failures by the Customer in fulfilling its obligations per charges outlined in Exhibit B or
- any request for additional services or hardware from the Customer or
- any request for services outside of Normal Working Hours or
- any requests for additional or repeat training or
- any incorrect information sent by Customer to LAERDAL as part of the Site Summary Requirements Checklist or under any other obligation of the Customer within the SimCapture milestones or under this Agreement or
- any other delays or deficiencies not attributable to LAERDAL

then this may result in a change to the Subscription Fee, Hardware Fee or the Implementation Service Fee and/or a delay to the implementation and provision of the Service which shall be handled in accordance with 10.6.2 below and will be based on the then current list price.

10.6.2 Customer and LAERDAL shall meet to discuss the change and the impact to the Subscription Fee and/or the Implementation Service Fee and/or the schedule for the Implementation Service and any such impact shall be agreed by parties entering into a written change order to this Agreement.

10.7 **Complete Agreement.** The Parties agree that this Agreement (including the Order Form, the Laerdal Service Terms, the Exhibits attached) constitutes the entire agreement between the parties and supersedes all prior agreements, understandings and communications, oral or written, between the Parties regarding the subject matter of this Agreement. Except as otherwise provided herein, additional or conflicting terms contained in any standardized form or correspondence of or from Customer are expressly unenforceable under this Agreement unless such terms and conditions are contained in an amendment to this Agreement duly executed by both Parties.

10.8 Notices. Any notice by a Party under this Agreement shall be in writing and either personally delivered, delivered by facsimile or sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address specified on the Order Form or such other address of which either Party may from time to time notify the other in accordance with this Section 10.8, or via email provided receipt of such email is acknowledged by the receiving party. All notices shall be in English and shall be deemed effective on the date of personal delivery, upon confirmation of a facsimile transmission, one day after deposit with an overnight courier, or five days after deposit in the mail.

10.9 Compliance with Laws. Customer shall, and shall ensure that all Authorized Users, comply with (i) all applicable United States laws and regulations which may govern the use of software by entities or persons located abroad, including without limitation the Export Administration Act of 1979, as amended (the "Act"), any successor legislation and the Export Administration Regulations issued by the Department of Commerce under the Act, and (ii) all applicable foreign laws and regulations, including, without limitation, laws with respect to the privacy and transmission of information and data.

10.10 Counterpart and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument.

10.11 Government Purposes. The Service was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Service is an agency, department, employee, or other entity of the United States Government, under FAR 12.212 and DFAR 227.7202, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, including technical data or manuals, is governed by the terms, conditions and covenants contained in the LAERDAL standard commercial license agreement, as contained herein.

10.12 Insurance.

Laerdal and Customer shall maintain at all times during the course of this contract the insurance coverage specified below:

- Workers Compensation - statutory coverage for every state in which activities under this contract will take place and employers liability limit of at least \$1,000,000 including a waiver of subrogation provision in the other party's favor
- General Liability – coverage for bodily injury, property damage, contractual liability, products & completed operations, premises & ongoing operations, and personal & advertising injury with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate and products/completed operations aggregate, naming the other party as an additional insured and providing a waiver of subrogation in favor of the other party.
- Umbrella Liability over Employers Liability and General Liability with limits of at least \$10,000,000 per occurrence and aggregate.

Customer shall maintain at all times during the course of this contract:

- Professional liability, errors & omissions, malpractice or similar insurance providing coverage for claims, suits or losses arising from the use of Customer Data or Output and for results or conclusions drawn from such use with limits of at least \$10,000,000 per occurrence and aggregate. If such coverage is written on a claims made basis, coverage shall be maintained for a period of five (5) years after the termination of this contract.
- Cyber insurance covering the Customer's obligations under applicable data privacy and data protection regulations, laws or conventions applicable to the Customer Data and the Customers use of the Service with limit of at least \$10,000,000 per occurrence and aggregate. If such coverage is written on a claims made basis, coverage shall be maintained for a period of five (5) years after the termination of this contract.

This Agreement has been entered into by duly authorized persons representing each party on the date signed by LAERDAL below ("Effective Date").

LAERDAL:

Signed: _____

Print Name: _____

Title: _____

Date: _____

Customer:

Signed: _____

Print Name: _____

Title: _____

Date: _____