

SERVICE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ___ day of October, 2003 by and between Advanced Circulatory Systems, Inc., a Delaware corporation ("Company"), with its place of business at 7615 Golden Triangle Drive, Suite A, Eden Prairie, Minnesota 55344 and the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin, acting through its Fire Department ("City").

WHEREAS, City desires to provide services to Company to assist Company in the administration of its clinical research in the City of Milwaukee by collecting data arising from City's use of the ResQPod™, a proprietary product of Company;

WHEREAS, Company desires to provide a grant to City's Fire Department in exchange for the services it receives from City;

WHEREAS, City believes that the performance of the services is in the public interest; and

WHEREAS, City's Common Council on October ___, 2003 approved this Agreement pursuant to Resolution No. _____;

NOW, THEREFORE, for good and valuable consideration deemed by each of the parties to be sufficient, Company and City agree as follows:

- 1. Definitions.** The following terms shall be given the meaning assigned unless a unique meaning is otherwise specified.

"Confidential Information" means information developed by City as a result of City's consultation, work or services with, for, on behalf of or in conjunction with Company and any information relating to Company, including, without limitation, information relating to products, processes, strategies, relationships, research, development, manufacturing, know-how, formulas, product ideas, inventions, trade secrets, patents, patent applications, systems, products, programs and techniques and any other secret, proprietary or confidential information, knowledge or data of Company. All information disclosed to City, or to which City obtains access, whether originated by City or by others, which is treated by Company as Confidential Information, or which City has reasonable basis to believe is Confidential Information, will be presumed to be Confidential Information. The term Confidential Information will not apply to information which (i) City can establish by documentation was known to City prior to receipt by City from Company; (ii) is lawfully disclosed to City by a third party not deriving the same from Company; or (iii) is presently in the public domain or becomes a part of the public domain through no fault of City.

"Inventions" means discoveries, improvements, inventions, ideas and works of authorship (whether or not patentable or copyrightable) conceived or made by City, either solely or jointly with others, relating to any consultation, work or services performed by City with, for, on behalf of or in conjunction with Company or based on or derived from Confidential Information.

“Services” means the services City is to provide to Company as described and set forth in Exhibit A attached hereto.

2. Performance of Services.

- a. City shall create, maintain and staff a position within City’s Fire Department titled (for the purpose of this Agreement) Cardiopulmonary Resuscitation Evaluator (“CPR Evaluator”) for the purpose of providing the Services under this Agreement.
- b. CPR Evaluator shall perform the Services, at the times and meeting the requirements, specifications and other conditions described and set forth in Exhibit A attached hereto.
- c. CPR Evaluator is an employee of City and, as such, City shall be responsible for monitoring CPR Evaluator to ensure that the Services are performed and CPR Evaluator is in compliance with the terms of this Agreement.
- d. City shall furnish Company with a monthly report showing the time, date and incident number of each cardiac arrest occurring within City of Milwaukee to which City of Milwaukee Fire Department responds during Normal Business Hours and whether CPR Evaluator was present and able to perform the Services during the cardiac arrest response (“Service Report”). The Service Report is due to Company by the 15th of the month following the month in which the Services are provided.

3. Compensation. In consideration for the Services provided by City, Company shall provide a grant of \$2,500.00 per month to City (individually, “Monthly Grant”). Payment of the Monthly Grant is conditioned upon Company’s receipt of the Service Report for such period. Company will pay the Monthly Grant to City by the 30th day of each month following the month in which the Services are provided and the Service Report for such period has been received by Company.

4. Expenses. Company shall not be liable for any expenses incurred by City during the performance of the Services unless agreed to in writing by Company prior to the expenses being incurred.

5. Term. The term of this Agreement (the "Term") shall be for a period of one (1) year, commencing on October ____, 2003, unless earlier terminated by the parties as set forth herein.

6. Independent Contractor. City acts solely as an independent contractor and shall not be considered an employee, partner, representative or agent of Company for any purpose whatsoever. City assumes full responsibility for CPR Evaluator’s actions while providing the Services. City acknowledges and agrees that Company has no responsibility whatsoever for the payment of any taxes, including but not limited to duties, levies, assessments, income taxes, social security taxes, payroll taxes, workers' compensation premiums or disability benefits which arise from CPR Evaluator providing the Services, or otherwise under the terms of this Agreement.

7. Nondisclosure of Confidential Information.

a. Except as required in City's services for Company and by the Public Records Law of Wisconsin, City will hold any Confidential Information in the strictest of confidence and never use, disclose or publish any Confidential Information without the prior written express permission of Company. City agrees to maintain control over any Confidential Information obtained and restrict access thereto to those of City's employees, agents or other associated parties who have a need to use such Confidential Information for the intended purpose. City agrees to advise and inform any party to whom City has provided access to the Confidential Information of its confidential nature and, in the event that the Confidential Information contains trade secrets or proprietary information of Company, City agrees to ensure associated parties be bound by the terms and obligation of this Agreement with regard to such trade secrets or proprietary information. City and Company shall comply with the Public Records Law of Wisconsin and Company will assist City in conforming to the law.

b. City further agrees that Company will have the right to refuse publication of any papers prepared by City as a result of City's consultation, work or services with, for, on behalf of or in conjunction with Company. Proposed publications referring to City's consultation, work, services and activities with, for, on behalf of or in conjunction with Company, or referring to any information developed therefrom, will be submitted by City to Company for review, prior to publication, to ensure that Company's position with respect to patent applications, trade secrets, Confidential Information, Intellectual Property, marketing programs, etc., are not adversely affected by publication disclosures. City agrees to abide by Company's decisions in these matters.

c. Except as required by the Public Records Law of Wisconsin, upon the request of Company, all records and any compositions, articles, devices, and other items which disclose or embody Confidential Information, including all copies or specimens thereof in City's possession, whether prepared or made by City or others, will be delivered to Company.

d. Except as required by the Public Records Law of Wisconsin, all documents and tangible items provided to City by Company or created by City for use in connection with its service to or association with Company are the property of Company and shall be promptly returned to Company upon termination of employment or association with Company, together with all copies, recordings, notes or reproductions of any kind made from or about the documents and tangible items or the information they contain.

e. If at any time during the term of this Agreement, City provides information to Company which to Company's knowledge is required to be kept confidential pursuant to any city, state or federal ordinance, law or regulation, Company agrees that it shall not make such confidential information available to any individual or organization, other than an appropriate agency of the city, state or federal government, without the prior written express permission of City.

8. Inventions. With respect to Inventions, as defined above, (irrespective of whether such Inventions are made on particular days during which City consults, works or renders any

service with, for, or to Company), City agrees that any Invention shall be the sole and exclusive property of Company and further agrees:

- a. to promptly and fully inform Company in writing of such Inventions;
- b. to assign to Company all of City's rights to such Inventions, and to applications for patents and/or copyright registrations and to patents and/or copyright registrations relating to such Inventions in the United States and in any foreign country; and
- c. to acknowledge and deliver promptly to Company (without charge to Company, with the exception of any out-of-pocket expenses incurred by City) such written instruments and do such other acts as may be reasonably necessary, in the opinion of Company, to obtain and maintain patents and/or copyright registrations and to vest the entire right and title thereto in Company.

9. Indemnification. City shall indemnify, and hold Company harmless from and against any and all claims, causes of action, losses, liabilities, costs, damages, judgments, penalties, fines, assessments, debts and obligations of every kind whatsoever, including without limitation Company's reasonable attorneys' fees and costs of litigation, and including without limitation any costs or liabilities resulting from CPR Evaluator being deemed an employee of Company, that may be asserted against Company growing out of, relating to or arising out of the performance of the Services by CPR Evaluator, or by anyone providing products or services to CPR Evaluator with respect to the Services, or otherwise under the terms of this Agreement. City shall have no liability under this Agreement for any product liability claim growing out of, relating to or arising out of City's use of the ResQPod™ or any other equipment of Company used by City to perform the Services. Company shall indemnify and hold City harmless from and against any and all claims, causes of action, losses, liabilities, costs, damages, judgments, penalties and obligations of every kind whatsoever, that may be asserted against City growing out of, relating to or arising out of any and all claims for product liability.

10. Termination by Company. Company retains the right, upon fifteen (15) days written notice, to terminate this Agreement at any time and for any reason. Following such termination, Company shall not be liable for any further grant payments hereunder or otherwise except for Services provided prior to termination.

11. Termination by City. City retains the right, upon fifteen (15) days written notice, to discontinue to provide the Services at any time and for any reason, provided, however, that nothing herein contained shall be construed to lessen in any way City's other obligations under this Agreement, including, but not limited to, City's obligations with respect to the Inventions and Confidential Information and shall only relieve City of its obligation to perform the Services.

12. Services of Third Parties. City shall not utilize the services of any third party or entity in providing the Services unless approved in writing by Company.

13. Not Assignable. Neither this Agreement nor any of City's rights or obligations hereunder, may be assigned or transferred by City to any party or parties or to any entity or entities without the express written consent of Company.

- 14. Authority.** City warrants to Company that (a) City has the right to enter into this Agreement; (b) except as required under the Public Records Law of Wisconsin, City has no obligations to any other person or entity which are in conflict with City's obligations under this Agreement; (c) in the event City has disclosed information to Company, created any original materials or used any proprietary information in consulting, working or rendering services with, for or to Company, City has the right to disclose, create or use such information or materials, as applicable, and such disclosure, creation or use will not violate any privacy, proprietary or other rights of others. City agrees to indemnify and hold Company harmless against any expenses, damages, costs, losses or fees (including legal fees) incurred by Company in any suit, claim or proceeding brought by a third party and which is based on facts which constitute a breach of the above warranties.
- 15. Consideration.** City hereby acknowledges that its contractor relationship with Company is sufficient consideration for the Confidentiality and Intellectual Property provisions contained in this Agreement.
- 16. Parties and Assignment.** This Agreement shall be binding upon City and shall inure to the benefit of Company and its successors and assigns.
- 17. Waiver.** Company's delay, waiver or failure to enforce any of the terms of this Agreement or any similar agreement in one instance shall not constitute a waiver of its rights hereunder with respect to other violations of this or any other agreement.
- 18. Remedies.** City recognizes that irreparable harm will result to Company and its business if City breaches any provision of this Agreement. Therefore, in the event of a breach of any provision of this Agreement, Company shall have the right, in addition to other remedies available to it, to injunctive relief restraining City from violating the terms of this Agreement, it being acknowledged that other remedies at law are inadequate.
- 19. Severability.** If any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be illegal, invalid or unenforceable, and such illegality, invalidity or unenforceability shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.
- 20. Survival.** The obligations of City set forth in this Agreement shall survive any termination or expiration of this Agreement or any relationship between City and Company.
- 21. Amendment.** This Agreement may not be modified or amended except by a written agreement signed by the parties hereto.
- 22. Further Assurances.** City agrees to execute such further papers, agreements, assignments or documents of title as may be necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

23. Notices. All notices required or permitted to be given under this Agreement shall be sent by registered U.S. Mail, return receipt requested, to the following addresses, unless otherwise specified in writing:

ACSI
7615 Golden Triangle Drive
Suite A
Eden Prairie, MN 55344

The City of Milwaukee Fire Dept.
711 West Wells Street
Milwaukee, WI 53233-1403

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin (without regard to principles of conflicts of law) applicable to contracts made and to be performed within such State. THE VENUE FOR ANY ACTION HEREUNDER SHALL BE IN THE STATE OF WISCONSIN, WHETHER OR NOT SUCH VENUE IS OR SUBSEQUENTLY BECOMES INCONVENIENT, AND THE PARTIES CONSENT TO THE JURISDICTION OF THE COURTS OF THE STATE OF WISCONSIN, AND THE U.S. DISTRICT COURT, DISTRICT OF WISCONSIN.

25. Conflicts of Interest. No member, official, agent or employee of City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, official, agent or employee participate in any decision relating to this Agreement which affects such person's personal interests or the interests of any corporation, partnership or association in which such person is, directly or indirectly, interested. No member, official, agent or employee of City shall be personally liable to Company or any successor in interest in the event of any default or breach by City under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Advanced Circulatory Systems, Inc.

By: _____

Its: _____

CITY OF MILWAUKEE, a municipal
corporation

By: _____
Mayor

By: _____

By: _____
City Clerk

Countersigned:

By: _____
Comptroller

DMB:dmb/1061-2003-2778/72886v3

EXHIBIT A

DMB:dmb/1061-2003-2778/72886v3