



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 Manor (“Customer”) with primary office at 105 E Eggleston St, Manor, TX 78653 (each, a “Party” and collectively the “Parties”).

AED Location(s): 10 Automated External Defibrillator (hereinafter referred to as “AED”) Locations are listed in Appendix A.

Start Date: 10/01/2020

TERMS

1. **Services Provided.** For each AED Location, AED123 will provide the following services:
 - a. Install an AED, AED cabinet, signage, and fast response kit;
 - b. Visit AED Location monthly to check AED and address any issues;
 - c. Replace AED batteries/pads as needed and per the device manufacturer’s guidelines;
 - d. Monitor for recalls and changes to the American Heart Association’s AED/CPR (CPR is cardiopulmonary resuscitation) guidelines and update AED software when required;
 - e. Replace the AED itself as needed and per the device manufacturer’s guidelines;
 - f. Ensure AED equipment and program are compliant with state and federal laws;
 - g. Ensure AED program and program are properly working and fit for use for its intended purpose;
 - h. Provide physician oversight, including post-use reporting and support;
 - i. Notify EMS of AED placement and device usage (notification is NOT real-time; responder(s) MUST dial 911 for EMS);
 - j. Manage required record keeping, including retention of AED maintenance and use records; and
 - k. Cover Customer as an additional insured through AED123’s product liability, general liability, and umbrella insurance policies and provide the Customer with such certifications as soon as possible after the execution of this Agreement.
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.
3. **Monthly Service Fee.** Customer will pay AED123 \$810.00 per month for services (the “Service Fee”). The first payment will be made on 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.
4. **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 \$8,910.00 per year, with the first payment being made on 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 if the contract is automatically renewed.
5. **Customer Responsibility.** Customer shall:
 - a. Support AED123 in installing, moving, or removing any AED 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 AED during normal business hours;
 - c. Take reasonable measures to protect AEDs from abuse, tampering, and theft;
 - d. Notify AED123 promptly if an 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 monthly visits; and
 - f. Contact AED123 with any questions or concerns at 1-833-AED-1231 or support@aed123.com and submit any ideas, notices, or feedback to feedback@aed123.com.
6. **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 11).
7. **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 8.
8. **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.
9. **Termination without Cause.** If Customer desires to terminate service before the end of its Initial Term or any Renewal Term, it can do so, provided that 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.
10. **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. In the event that 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).
11. **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 8).
12. **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.
13. **Post Termination of Agreement.** Upon termination of this Agreement, AED123 will recover the AEDs, cabinets, and fast response kits that it owns from Customer's AED Location(s). Customer agrees to provide AED123 with access to Customer's premises and to cooperate with AED123 in the removal of such AEDs, cabinets, and fast response kits. If Customer has previously vacated any AED Location(s), either voluntarily or after an eviction, then Customer is responsible for returning to AED123 the AEDs, cabinets, and fast response kits that AED123 owns.
14. **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.
15. **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.
16. **Limitation of Liability.** While nothing in this Agreement limits or excludes the liability of AED123 for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, AED123 shall not be liable for loss of profits or for any special, punitive, indirect or consequential loss, costs, damages, charges or expenses, and AED123's liability in contract, tort, restitution or otherwise arising in connection

with the performance or contemplated performance of this Agreement shall be limited to the total Service Fees for the Service Term and attorney's fees.

17. **Governing Law.** This Agreement will be governed by the laws of the State of Texas and venue shall be established in Travis County, Texas.
18. **Mediation.** In the event that 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 in an effort to resolve the dispute without the necessity of litigation.
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. **User of Services.** If any service provided by AED123 is considered to be classified as repair or maintenance to tangible personal property, then that service is considered to be used and consumed by the Customer's employees and tenants who are trained in CPR, and not Customer itself.
21. **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.
22. **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, or future laws. As such, AED123 reserves the right to give at least 30 days' notice to Customer of such requested 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 with no consequences.
23. **Severability.** In the event that 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.
24. **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 but such an assignment will require Customer's written consent. Any assignment by Customer will require AED123's written consent, which will not be withheld unreasonably.
25. **Survival.** The following Sections shall survive termination or expiration of this Agreement: 5a, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.
26. **Interested Party.** AED123 acknowledges that Texas Government Code Section 2252.908 ("Section 2252.908") requires disclosure of certain matters by a business entity entering a contract with a government entity such as the Customer. AED123 confirms that it has reviewed Section 2252.908 and will 1) complete Form 1295 and electronically file it with the Texas Ethics Commission ("TEC"); and 2) submit the signed Form 1295, including the certification of filing number of the Form 1295 with the TEC, to the Customer at the same time AED123 executes and submits this Agreement to Customer. Form 1295 is available at the TEC's website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. This Agreement is not effective until the requirements listed above are satisfied and any award of this Agreement by Customer is expressly made contingent upon AED123's compliance with such requirements. The signed Form 1295 may be submitted to Customer in an electronic format.
27. **Conflicts of Interest.** AED123 acknowledges that Texas Local Government Code Chapter 176 ("Chapter 176") requires the disclosure of certain matters by vendors doing business with or proposing to do business with local government entities such as Customer. AED123 confirms that it has reviewed Chapter 176 and, if it is required to do so, will complete and return FORM CIQ promulgated by the TEC and available on the TEC website at :<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf> seven (7) days of the date of

submitting this Agreement to Customer or within seven (7) days of becoming aware of a matter that requires disclosure under Chapter 176, whichever is applicable.

28. **Verification under Chapter 2271, Texas Government Code.** For purposes of Chapter 2271 of the Texas Government Code, AED123 represents and warrants that, at the time of execution and delivery of this Agreement, neither AED123, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, boycotts Israel or will boycott Israel during the term of this Contract. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycotts Israel” and “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. AED123 understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with AED123 and exists to make a profit.
29. **Verification under Chapter 2252, Texas Government Code.** AED123 represents and warrants that, neither AED123, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/publications/divestment.php>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes AED123 and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. AED123 understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with AED123 and exists to make a profit.
30. **Independent Contractor.** AED123 is an independent contractor not affiliated with Customer and shall retain its independent status throughout this Agreement and use its own discretion in performing the tasks assigned. AED123 shall perform in all respects as an independent contractor and not as an employee, partner, joint venture or agent of the Customer. No employment relationship is created by this Agreement. The work to be performed by the AED123 shall be subject to the Customer’s review, approval and acceptance but the detailed manner and method of performance shall be under the control of AED123. The accuracy, completeness, and scheduling of the work and the application of proper means and methods for performance of the work are entirely the responsibility of the AED123. AED123 shall be solely responsible for hiring, supervising and paying its employees. AED123 shall be solely responsible for payment of all (i) compensation, including any employment benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to AED123’s employees. However, because AED123’s work may be associated in the minds of the public with Customer, AED123 shall ensure that all work by its employees is performed in an orderly, responsible and courteous manner. AED123 will report as income to the appropriate government agencies all compensation received pursuant to this Agreement and will pay all applicable taxes.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date and year first written above.

AED123, LLC

Signature: _____
Bobby Wehmeyer, Founder & CEO

City of Manor

Signature: _____

Name: _____

Title: _____

APPENDIX A

AED Location(s)

Physical Address of Location	Description of Location (e.g. which floor or wing)	AED Type	AED Owner	Monthly Service Fee
105 E Eggleston St, Manor, TX 78653	City Hall Main Lobby	HeartStart OnSite Adult Pads In Cabinet	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Department Main Lobby	HeartStart OnSite Adult Pads In Cabinet	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 1	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 2	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 3	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 4	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 5	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
402 W. Parsons St Manor, TX 78653	Police Vehicle 6	HeartStart OnSite Adult Pads In Pelican Case	AED123	\$81
547 Llano St Manor, TX 78653	Public Works Main Lobby	HeartStart OnSite Adult Pads In Cabinet	AED123	\$81
105 E Eggleston St, Manor, TX 78653	Location TBD	HeartStart OnSite Adult Pads In Cabinet	AED123	\$81

Note:

- Cabinet and signage will not be installed for AEDs in Pelican Cases
- AED123 may deploy a comparable AED Type, in lieu of any AED Type listed above, either temporarily or permanently, if/as required by device recalls, discontinuation, or availability in AED123's inventory