



MASTER SUBSCRIPTION SERVICE AGREEMENT

XOFT, A SUBSIDIARY OF ICAD, INC. ("XOFT") IS WILLING TO PROVIDE CERTAIN SERVICES AND/OR SOFTWARE TO YOU AS THE INDIVIDUAL, THE COMPANY, OR THE LEGAL ENTITY (REFERENCED BELOW AS "YOU" OR "YOUR" OR "CUSTOMER") THAT ENTERS INTO ONE OR MORE QUOTES, ORDER FORMS, STATEMENTS OF WORK, OR SIMILAR DOCUMENTS (EACH A "QUOTE") WITH XOFT THAT REFERENCES THIS MASTER SUBSCRIPTION SERVICE AGREEMENT (THIS "AGREEMENT"), ONLY ON THE CONDITION THAT YOU ACCEPT THIS AGREEMENT. READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING ANY SERVICES FROM XOFT. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AND XOFT. BY ENTERING INTO A QUOTE WITH XOFT THAT REFERENCES THIS AGREEMENT, YOU AGREE TO BE BOUND BY AND COMPLY WITH THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF (AND FOR USE ON BEHALF OF) A COMPANY OR OTHER ENTITY (A "CORPORATE ENTITY"), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH CORPORATE ENTITY TO THE TERMS OF THIS AGREEMENT AND YOU ACKNOWLEDGE THAT THE TERM ""CUSTOMER" REFERENCED BELOW REFERS TO SUCH CORPORATE ENTITY.

1. DEFINITIONS

- 1.1 Affiliates means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 1.2 Confidential Information has the meaning ascribed to it in Section 4.1.
- 1.3 Customer means the person or entity that enters into a Quote or similar ordering document with Xoft that expressly references this Agreement
- 1.4 Customer Data means all Data made available by Customer or its Users to Xoft for use in connection with the Services or generated by Customer via use of the Services and includes, without limitation.
- 1.5 Data means text, images, documents, materials, photos, audio, video, and all other forms of data or communication.
- 1.6 Documentation means the documentation for the Subscription Service or Hardware, as the case may be, generally supplied by Xoft to assist its customers in the use of the Subscription Service or Hardware, including user guides and manuals and other written materials.
- 1.7 Hosted Service means Xoft's proprietary Axxent Hub® web based software program that provides collaboration and management of patient workflow.
- 1.8 Platinum Comprehensive Service Coverage means Xoft's maintenance and support coverage services for the specific controller listed on the Quote.
- 1.9 Professional Services means those installation, set-up, integration, configuration, consulting and/or training services, if and as specified on a Quote to be provided by Xoft.
- 1.10 Quote means each Xoft ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the specific Subscription Service and Professional Services ordered by Customer from Xoft, identifies any Sources being provided by Xoft to Customer, sets forth the prices for the Services and any Sources and contains other applicable terms and conditions.
- 1.11 Representatives has the meaning ascribed to it in Section 4.1.

1.12 Services means the Subscription Service and any Professional Services provided by Xoft pursuant to Section 2.1 hereof.

1.13 Source Usage means Xoft's provision of Sources on a consignment basis and related services.

1.14 Sources shall mean X-ray sources for use with Xoft's controller.

1.15 Subscription Service means Xoft's Platinum Comprehensive Service Coverage, Source Usage and/or the Hosted Service to the extent ordered by Customer and set forth on the applicable Quote.

1.16 Subscription Term means the term for the applicable Subscription Service as set forth on the applicable Quote.

1.17 Users mean individual employees and contractors of Customer or its Affiliates who are authorized by Customer to use the Services, and, with respect to the Hosted Service, who have been supplied passwords by Customer (or by Xoft at Customer's request). Users consist of designated employees and independent contractors of Customer.

1.18 Xoft Data means all Data made available by Xoft to Customer in connection with Customer's use of the Services.

1.19 Work Product means any work product, deliverables, programs, interfaces, modifications, configurations, reports, analyses or documentation developed by Xoft on behalf of Customer and delivered to Customer in the performance of any Professional Services.

2. SERVICES

2.1 Services. Xoft shall provide Customer with the specific Services specified on a Quote. Customer further acknowledges that the Services are provided in accordance with and are subject to the provisions set forth in this Agreement, the applicable Quote as well as

- (A) the additional terms and conditions set forth on Exhibit A hereto with respect to Platinum Comprehensive Service Coverage;
- (B) the additional terms and conditions set forth on Exhibit B hereto with respect to Source Usage; and
- (C) the additional terms and conditions set forth on Exhibit C hereto with respect to the Hosted Service.

3. FEES; PAYMENT TERMS

3.1 Fees. The Customer agrees to pay Xoft for Services provided and expenses incurred on the basis and at the rates specified in each Quote. Unless otherwise set forth on the Quote, payment shall be due within thirty (30) days after receipt of Xoft's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all reasonable travel and out-of-pocket expenses incurred by Xoft in connection with any Services rendered provided the same were pre-approved by Customer in advance in writing.

3.2 Disputed Charges. If Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the Parties, Customer shall pay the amounts due under this Agreement less the disputed amount, and the Parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Xoft on or before the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer that are not in dispute have been paid as and when required under this Agreement.

3.3 Taxes. Fees are exclusive of taxes. Customer shall be responsible for the payment of all sales, use and similar taxes arising from or relating to the Services rendered or Hardware provided hereunder, except for taxes related to the net income of Xoft and any taxes or obligations imposed upon Xoft under federal, state and local wage laws.

4. CONFIDENTIALITY

4.1 Confidential Information. Each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event, shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights. This Section 4.1 shall survive for a period of five (5) years following the termination of this Agreement.

4.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

5. WARRANTY

5.1 Services Warranty. Xoft warrants that any Services provided hereunder shall be provided in a competent manner in accordance with any specifications set forth in the Quote, in all material respects. Xoft further warrants that any Work Product provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set forth in the applicable Quote. If the Services are not performed as warranted or the Work Product does not so comply, then, upon Customer's written request, Xoft shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for thirty (30) days following the completion of the Services or the delivery of each applicable portion of the Work Product, as the case may be. Such re-performance shall be Customer's exclusive remedy and Xoft's sole liability for any such non-performance. If, however, after

repeated efforts, Xoft is unable to remedy such defect in any Work Product, then Customer's sole remedy and Xoft's entire liability shall be to refund to Customer any amounts previously paid by Customer for the particular deficient Services or Work Product.

5.2 Medical Decisions. Notwithstanding anything in this Agreement contrary, Customer acknowledges and agrees that Xoft is not engaged in the practice of medicine, and is not determining appropriate medical use of any of the Services that are, or may be, offered pursuant to this Agreement. Medical order, treatment and diagnostic decisions, including those arising from the results of any use of the Services are the responsibility of Customer. Customer shall defend, indemnify and hold harmless, Xoft and its officers, agents, consultants, employees and third-party suppliers from and against all Losses, arising from any claim of malpractice, misdiagnosis, or any other medical treatment matter in connection with the use by Customer, or any third parties, of any Services supplied to Customer by Xoft except to the extent that such Losses resulted from Xoft's gross negligence or willful misconduct.

5.3 Exclusion from Governmental Programs. Each party represents and warrants to the other that, as of the Effective Date to its knowledge, neither it, nor any individuals employed or engaged by it, nor any of its respective members, officers, directors, and in the case of Xoft, any other person or entity that has an ownership or investment interest in Xoft, is now, is about to be or has: (a) been excluded, debarred, suspended or been otherwise determined to be, or identified as, ineligible to participate in any governmental program, including but not limited to Medicare and Medicaid (collectively, the "Governmental Programs"); (b) received any information or notice, or become aware that it is the subject of any investigation or review regarding its participation in any Government Programs; or (c) been convicted of any crime relating to any Governmental Program. Each party agrees to notify the other party promptly if it becomes aware of any of the foregoing information during the Term. Any breach of this representation and warranty shall give the other party the right to terminate the Agreement immediately for cause. Such party shall immediately give notice to the other if the foregoing representation and warranty is untrue at any time during the Term of this Agreement.

5.4 CLINICAL DISCLAIMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY DATA OR OTHER INFORMATION CONTAINED IN OR MADE AVAILABLE VIA THE SERVICES SHOULD BE REVIEWED BY A QUALIFIED PHYSICIAN PRIOR TO USE AND IS NOT INTENDED AS A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL AND JUDGMENT OF MEDICAL PROFESSIONALS IN MAKING DECISIONS WITH RESPECT TO HEALTHCARE. CUSTOMER IS RESPONSIBLE FOR VERIFYING ALL INFORMATION BEFORE APPLYING IT TO THE CLINICAL SETTING. XOFT AND ITS LICENSORS AND SUBCONTRACTORS DENY ALL RESPONSIBILITY FOR THE USE OR MISUSE OF THE SERVICES, ANY CONTENT THEREON AND IN CARING FOR PATIENTS. INFORMATION, DATA, RECOMMENDATIONS, INDICATIONS, BENEFITS, QUESTION SETS OR REPORTS, AND ANY AND ALL OTHER INFORMATION AND CONTENT, REGARDLESS OF FORM, MADE AVAILABLE BY XOFT IN CONNECTION WITH THE SERVICES DO NOT CONSTITUTE BILLING OR CLINICAL ADVICE, REIMBURSEMENT GUIDANCE OR CLINICAL OR MEDICAL RECOMMENDATIONS OR ADVICE BY XOFT. ACCESS TO SUCH CONTENT PROVIDED BY XOFT OR ITS LICENSORS DOES NOT CREATE ANY PHYSICIAN-PATIENT RELATIONSHIP. IN MAKING ANY CONTENT OR DATA AVAILABLE, XOFT DOES NOT IMPLY OR REPRESENT THAT IT SPONSORS OR ENDORSES THE CONTENT. XOFT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED AS TO THE ACCURACY OR COMPLETENESS OF THE CONTENT OR DATA. THE OPINIONS EXPRESSED IN THE CONTENT OF DATA ARE SOLELY THE OPINION OF THE INDIVIDUAL AUTHOR AND MAY NOT REFLECT THE OPINIONS OF XOFT, OTHER INDIVIDUAL PHYSICIANS OR HEALTH CARE PROVIDERS OR SUPPLIERS. ALL CONTENT AND DATA IS MADE AVAILABLE ON AN "AS IS, WHERE IS" BASIS WITHOUT WARRANTY OF ANY KIND

5.5 No Other Warranty. THE WARRANTIES STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY XOFT. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

6. LIMITATION OF LIABILITY.

6.1 Consequential Damage Waiver. Neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

6.2 Limitation of Liability. Except as may arise out of Xoft's breach of Section 4, the total cumulative liability of Xoft to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the fees paid by Customer to Xoft under the Quote for the Services which form the subject of the claim during the six (6) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the Parties. The pricing set forth in each Quote reflects this allocation of risk and the limitation of liability specified herein.

7. TERM

7.1 Term. This Agreement will continue in effect until otherwise terminated in accordance with Section 7.2 below. The applicable Subscription Term for each Subscription Service shall be set forth on the Quote. Unless otherwise expressly provided in the applicable Quote, each Subscription Term shall automatically renew for additional terms of one (1) year each unless either Party notifies the other Party in writing at least thirty (30) days prior to the then current expiration date that it has elected not to renew such Subscription Term. Xoft reserves the right to change the rates, applicable charges and usage policies and to introduce new charges, for such Subscription Term upon providing Customer written notice thereof (which notice may be provided by e-mail) at least 60 days prior to the then current renewal date of the Subscription Term. The expiration of a Subscription Term for a particular Subscription Service on a Quote will not affect any other Subscription Term for a different Subscription Service on such Quote.

7.2 Termination. Notwithstanding the foregoing, either Party may terminate this Agreement or any Quote (i) immediately in the event of a material breach of this Agreement or any such Quote by the other Party that is not cured within thirty (30) days of written notice thereof from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Quote shall not be deemed a termination of this Agreement or any other outstanding Quote. Termination of this Agreement shall, however, terminate all outstanding Quotes. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Quotes then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Quote. Except as expressly provided herein, termination of this Agreement by either Party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such Party. Upon termination of this Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession.

8. OWNERSHIP; USE OF DATA; OBLIGATIONS

8.1 Customer Data. Customer retains ownership of all right, title and interest in and to all Customer Data. During the term of this Agreement, Customer hereby grants to Xoft a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit the Customer Data solely as necessary to provide the applicable Subscription Service to Customer.

8.2 Customer Obligations. Customer is solely responsible for all Customer Data. Xoft does not guarantee the accuracy, integrity or quality of such Customer Data. Neither Customer nor its Users shall use the Subscription Service to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation.

8.3 Xoft Data. Xoft retains ownership of all right, title and interest in and to the Xoft Data. During the term of this Agreement, Xoft grants to Customer a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit, and distribute the Xoft Data solely in connection with Customer's permitted use of the Subscription Service.

8.4 Work Product. Customer will have a non-exclusive, non-transferable (except as set forth in Section 10.2) license to use any Work Product developed by Xoft in the performance of the Professional Services and delivered to Customer, upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use. Xoft retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Xoft in the performance of this Agreement.

9. INDEMNIFICATION

9.1 Xoft Indemnification. Subject to Section 9.3 below, Xoft will indemnify, defend and hold Customer and its Affiliates harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer or any of its Affiliates alleging that the use of the Services or Work Product as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services or Work Product in violation of this Agreement or applicable law, (b) use of the Services or Work Product after Xoft notifies Customer to discontinue use because of an infringement claim, (c) any claim relating to any third party products or services or Customer Data, (d) modifications to the Services or Work Product made other than by Xoft (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Work Product with software or equipment which was not provided by Xoft, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; (f) the use of any third party Hardware or (g) compliance by Xoft with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement. If the Services or Work Product are held to infringe, Xoft will, at its own expense, in its sole discretion use commercially reasonable efforts either (i) to procure a license that will protect Customer against such claim without cost to Customer; (ii) to replace the Services or Work Product with non-infringing Services or Work Product; or (iii) if the foregoing clauses (i) and (ii) are not commercially feasible, terminate the Agreement or the applicable Quote and refund to the Customer any prepaid unused fees paid to Xoft for the infringing Services or Work Product. The rights and remedies granted Customer under this Section 9.1 state Xoft's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

9.2 Customer Indemnification. Subject to Section 9.3 below, Customer shall indemnify, defend, and hold Xoft and its Affiliates harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Xoft or any of its Affiliates that arises out of or results from (i) a claim alleging that the Customer Data, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party or (ii) Customer's use of the Services (except where Xoft is obligated to indemnify Customer as specified above in Section 9.1).

9.3 Indemnification Procedure. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

10. GENERAL PROVISIONS

10.1 Entire Agreement and Controlling Documents. This Agreement, including all Exhibits hereto and all Quotes, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Quote and that are duly signed by the authorized representatives of both Parties may amend this Agreement or such Quote. No terms and conditions of any Customer purchase order shall modify the terms and conditions of this Agreement, or add any additional or inconsistent terms for any reason or purpose whatsoever, regardless of any statement in a purchase order to the contrary. Any conflict between the terms and conditions set forth in this Agreement and any Quote shall be resolved in favor of the Quote.

10.2 Assignment. This Agreement shall be binding upon and for the benefit of Xoft, Customer and their permitted successors and assigns. Either Party may assign this Agreement and all Quotes as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in this Agreement, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. Xoft may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Xoft shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, USA without regard to its conflict of law provisions.

10.4 Disputes. Any disputes between the Parties arising out of this Agreement or any Quote shall be resolved as follows: Members of the senior management of both Parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within thirty (30) days, either Party may make a written demand for mediation. Within thirty (30) days after such written notification, the Parties shall meet for one day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the Parties. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in Boston, Massachusetts. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. Unless provided otherwise herein, the arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator shall have no power to award damages inconsistent with this Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the Party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the Parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party shall give written notice to all other Parties and shall afford such Parties a reasonable opportunity to protect their interests. The result of the arbitration shall bind the Parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party shall bear its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the Parties. The parties agree that a party need not invoke the procedures set forth in this Section 10.4 in order to seek injunctive relief pursuant to Section 4.3.

10.5 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

10.6 Relationship of the Parties. Xoft and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

10.7 Force Majeure. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

10.8 Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth on the applicable Quote. Either Party may change its address by giving written notice of such change to the other Party.

10.9 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

10.10 Insurance. Each party will carry and maintain during the Term, at its own cost and expense, commercial general liability insurance of at least \$1 million per occurrence with a \$3 million aggregate covering claims for bodily injury, death, personal injury or property damage. Upon Xoft's request, Customer shall provide a certificate evidencing such insurance coverage. Customer shall use good faith efforts to cause its insurers to agree to provide at least thirty days' prior written notice to Xoft of any change in, or cancellation of, such insurance coverage.

10.11 Publicity. Neither party will use, publicize, or issue any press release which includes the name, trademarks, or other proprietary identifying symbol of the other party without the prior written consent of the other party; provided, that Xoft may include Customer's name and logo on lists of selected Customers.

10.12 Waiver and Severability. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.



Exhibit A

PLATINUM COMPREHENSIVE SERVICE COVERAGE

In addition to the terms and conditions set forth in the Agreement and the Quote, the following additional terms and conditions set forth in this Exhibit A shall apply to Xoft's Platinum Comprehensive Service Coverage.

1. General. Xoft's Platinum Comprehensive Service Coverage pertains to Xoft instruments listed on the Quote and which have been sold by Xoft to Customer ("Instrument(s)"), and any Xoft software installed on the Instrument, which software is owned and licensed by Xoft to Customer. Any part or subassembly of an Instrument that is sold or provided to Customer by Xoft shall be deemed "Covered Parts." The software and Instruments are collectively referred to herein as the "Controller." Unless otherwise expressly stated in the Quote Xoft's Platinum Comprehensive Service Coverage applies to Controllers installed in U.S. locations only.
2. Services. Xoft shall provide to Customer the services ("Covered Services") as stated on the applicable Quote. Covered Services may include (to the extent purchased by Customer) preventative maintenance, repair, support and software maintenance.
 - a. Repair. Customer shall document and promptly report all errors or malfunctions of the Controller to Xoft. Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Xoft. Xoft or its designee shall perform all necessary repair service and standard preventative maintenance of the equipment or otherwise correct any material reproducible failure or malfunction. All labor, travel and parts are included. Replaced products, components or subassemblies will be new or like new of equal performance. All Xoft Controllers require a consistent and reliable power source in order to perform optimally. Xoft assumes no responsibility for damage caused by any powersource.
 - b. Customer Support. Telephone support shall be provided by Xoft during normal business hours 7am - 5pm Pacific Time Monday – Friday, excluding Xoft holidays. On-Site support will be provided during normal business hours as well with a response of next business day or less, when Xoft determines an on-site visit is needed.
 - c. Software Maintenance. Xoft will provide or install, at Xoft's discretion further software maintenance releases relating to the software used to control the Instrument. Any such releases, when delivered, shall be maintained in accordance with this Agreement.
 - d. Service Limitations. Customer agrees to follow the operation procedures published by Xoft, including procedures for routine maintenance. Xoft shall have no obligation to support any Controller, service or parts required as a result of the following, and any services requested as a result thereof will be billed to Customer at Xoft's then-current service call fees, including all labor, parts and travel charges:

(i) Customer abuse, neglect, misuse, accidents, or the failure to perform routine operational maintenance;
(ii) Improper or inadequate, installation, adjustment, calibration or operation of the Controller by Customer or its designee;

(iii) Modifications, alterations or additions or attempted modifications, alterations or additions made to the Controller without the prior written approval of Xoft;

(iv) Repairs or maintenance by anyone other than Xoft or its designee, except such routine operational maintenance performed as set forth in the product operation, installation or maintenance manuals provided with the Controller, or agreed to by Xoft;

(v) Any use that deviates from any operating procedures established by Xoft in the product operation, installation or maintenance manuals provided with the Controller, or as otherwise agreed to by Xoft, or any causes other than ordinary use;

(vi) Unapproved relocation or transportation of the Controller;

3. Limitations. Any and all instruments, software, other products, or any parts or subassemblies that are not provided by Xoft or its designee shall be deemed "Non-Covered Equipment." Xoft shall have no obligations with respect to Non-Covered Equipment; moreover, and notwithstanding anything herein to the contrary, Xoft shall have no obligation to provide Covered Services in connection with any Non-Covered Equipment.

4. Access and Service Safety. Customer will provide Xoft and its designee's reasonable and safe access to all Controllers for the provision of any Services and for any audit of compliance with Xoft installation and operational guidelines. If environmental or operational contamination creates a hazard for Xoft personnel, Xoft may supervise Customer's performance of service procedures. Customer is responsible for proper disposal of all contaminated material and of contaminated parts that cannot be safely returned to Xoft. Customer shall maintain a backup copy of all software and related data. Customer shall properly train (or have trained by Xoft) its personnel in the use and application of the Controller.

5. Relocation of Covered Equipment. If any Instrument is moved from its original installation location, Xoft may, at its discretion, determine that such Instrument has been relocated ("Relocation"). Relocation of Instruments may result in service charges as follows:

(a) Approved Relocation. Relocation of Instruments by Xoft or its designees is permitted. Instruments may be moved with the assistance of Xoft at Xoft's then-current service call fees, including all labor, parts and travel charges. With prior written approval of Xoft, Customer may move specified Instruments without incurring any charges. Customer will contact Xoft prior to moving any Instrument.

(b) Unapproved Relocation. Any Quote or warranty covering an Instrument shall be rendered void and unenforceable by Relocation of such Instrument without the prior written approval of Xoft. At the discretion of Xoft, upon completion of a maintenance inspection and service at Xoft then-current service call fees, including all labor, parts and travel charges, the subject Quote Agreement or warranty may be reinstated.

6. Obsolete Products. Covered Parts or Instruments that are no longer offered for sale or license by Xoft ("Obsoleted Items") will be maintained and repaired on a reasonable efforts basis by Xoft. If Xoft determines in its discretion that support and service of such Obsolete Items is no longer reasonable, Xoft

shall notify Customer of such determination and such Obsolete Item shall be deemed to not be a Covered Part or Instrument.

7. Billable Services. All services performed by Xoft on Customer's Non-Covered Equipment or which are not Covered Services (collectively, "Billable Services") shall be billable to Customer at Xoft's then-current service call fees, including all labor, parts and travel charges.

8. Ownership. All replaced parts removed in connection with any services shall become the property of Xoft upon their replacement. Any and all modifications to the Controller, including all intellectual property rights associated therewith, made or provided by Xoft pursuant to this Agreement, whether alone or with any contribution from Customer or its employees, agents or contractors, shall be owned exclusively by Xoft. To the extent Customer or its employees, agents or contractors, may acquire any right or interest therein by operation of law, Customer irrevocably assigns all such right and interest exclusively to Xoft. Customer shall maintain and enforce agreements and policies with its employees, agents and contractors sufficient to give effect to the provisions of this Paragraph.

Exhibit B SOURCE

USAGE

In addition to the terms and conditions set forth in the Agreement and the Quote, the following additional terms and conditions set forth in this Exhibit B shall apply to Xoft's Source Usage.

1. Consignment: Xoft shall consign to Customer and Customer accepts on a consignment basis the number of X-ray sources listed in the applicable Quote ("Consignment Inventory") for Source Usage. Xoft shall retain title to all Consignment Inventory until such Consignment Inventory is used by Customer. Customer will keep the Consignment Inventory free from all claims and encumbrances at all times. Xoft will replace each Source of the Consignment Inventory when it reaches end of useful life during the duration of this Agreement.

2. Minutes of Usage. Usage by Customer shall not exceed the number of Source usage minutes set forth on the applicable Quote.

3. Customer Obligations. Customer shall provide and maintain a suitable place for storage of the Consignment Inventory comprising X-ray sources.
- a. Customer agrees to maintain the source per the current source Instructions For Use.
 - b. Customer contacts Customer Service at 877-963-8327 to request a replacement source per the following
 - Provide the source usage report along with the serial number and reason for return.
 - Email usage report to customerservice@icadmed.com or fax to 866-222-3404
 - c. Once Customer Service receives this information Xoft will ship out a replacement Source and issue a RMA and instructions to return the Source.
 - d. Customer agrees to return the used Sources to Xoft immediately. If Customer fails to return the Source, Customer will be required to pay for the Source at Xoft's current list price Net 30 days.
 - e. If Customer damages a Source due to improper Source maintenance, accident, abuse or misuse, Customer will be invoiced at current list price for the damaged Source.
 - f. Customer will allow Xoft access with proper notification to inspect the Consignment Inventory.
 - g. Customer will bear the risk of loss or damage of the Consignment Inventory, and will be invoiced for any damaged or lost Sources at Xoft's then current list price.

4. Obligations Upon Termination. Upon termination of the applicable Source Usage Quote or Source Usage Subscription Term, (i) Customer shall promptly return Consignment Inventory to Xoft within 10 days from termination date, (ii) Customer shall pay for any missing or damaged items at Xoft's list price and (iii) Customer shall allow a Xoft Field Service Engineer access to the Controller to set the Source Usage parameters back to the standard "Non-Source Usage Agreement" settings.

Exhibit C

Axxent Hub (Hosted Service) – Terms of Use

In addition to the terms and conditions set forth in the Agreement and the Quote, the following additional terms and conditions set forth in this Exhibit C (“Terms of Use”) shall apply to Customer’s use of Xoft’s Axxent Hub.

A. Hosted Service.

1. Hosted Service. Subject to the terms and conditions of these Terms of Use, the Quote and the Agreement, Xoft will provide Customer with access to the Hosted Service during the term set forth on the applicable Quote. DSL, cable or another high-speed Internet connection is required for proper access to the Hosted Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Hosted Service. Xoft assumes no responsibility for the reliability or performance of any connections as described in this Section. Customer shall not attempt to access any other of Xoft’s systems, programs or data that are not made available for public use in connection with the Hosted Service. In connection with its use of the Hosted Service, Customer shall be entitled to access and use only those modules and software applications of the Hosted Service that are expressly listed on a Quote. No management, development, or technical services are provided by Xoft in connection with the Hosted Service. If Customer desires any such additional services it will need to enter into a separate Quote with Xoft.

2. Xoft Technology. In connection with the performance of the Hosted Service, Xoft shall operate and support the Hosted Service’s environment, including, without limitation, the Xoft Technology (as defined below), all applicable server hardware, disk storage, firewall protection, server operating systems, management programs, Web server programs, Web Applications, Graphical User Interface, documentation and all other information developed or provided by Xoft or its suppliers under the Agreement, as well as all other documents, software, products and services contained or made available to Customer in the course of using the Hosted Service (collectively, the “Subscription Materials”). For purposes of these Terms of Use “Xoft Technology” means all of Xoft’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Xoft in providing the Hosted Service.

3. License Grant. Subject to the terms and conditions of these Terms of Use and the Agreement, and in consideration for the payment of fees set forth on each respective Quote for the Hosted Service, Xoft hereby grants to Customer a non-exclusive, non-transferable license to allow the number of Users (if applicable) set forth on the applicable Quote to access the Hosted Service solely for Customer’s internal use and solely for the specific service offering (as indicated on the applicable Quote). This license is restricted to use by Customer and its Users and does not include the right to use Xoft Technology on behalf of any third party or the right to permit any non-User to access or use the Hosted Service. Customer also agrees to be bound by any further restrictions set forth on the Quote. All rights not expressly granted to Customer are reserved by Xoft and its licensors. There are no implied rights.

4. Licensed Volume. Customer acknowledges that access and use of the Hosted Service is licensed to Customer at one Customer location only for use up to the number of Users or other metric purchased by Customer and set forth on the applicable Quote (the “Volume Limitations”). By way of example, if a Quote specifies a specific number of Users, then the Hosted Service may only be accessed and used for that number of Users at the Customer location set forth on the Quote. In the event that the Hosted Service is used in excess of the Volume Limitations set forth on the Quote, then Customer shall be obligated to pay Xoft for the number of applicable Users or other metric purchased by Customer, as the case may be, in excess of such Volume Limitations at Xoft’s then current excess fee rates (the “Excess Fee”). Customer may also add licenses for additional Users or other metric purchased by Customer by executing a new Quote or addendum thereto.

5. Restrictions. Customer is responsible for all activities conducted under its User logins and for its Users’ compliance with these Terms of Use and the Agreement. Unauthorized use, resale or commercial exploitation of the Hosted Service and/or the Subscription Material in any way is expressly prohibited. Without Xoft’s express prior written consent in each instance, Customer shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Subscription Materials, including the Xoft Technology, or access the Hosted Service in order to build a competitive product or service or copy any ideas, features,

functions or graphics of the Hosted Service. Except as expressly permitted in these Terms of Use, Customer shall not copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Hosted Service or the Subscription Materials to any third-party. Customer shall not use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Hosted Service. Customer shall take all measures necessary to ensure compliance by all of its Users authorized to access the Hosted Service pursuant to Section 3 above with all terms and conditions of these Terms of Use and the Agreement. Customer shall be liable for any breach of these Terms of Use or the Agreement by any of its Users. In addition to Xoft's other remedies hereunder, Xoft reserves the right upon notice to Customer to terminate any User's right to access the Hosted Service if such User has violated any of the restrictions contained in these Terms of Use or the Agreement.

6. Ownership. Customer acknowledges and agrees that (i) as between Xoft and Customer, all right, title and interest in and to the Hosted Service, the Subscription Materials, including the Xoft Technology and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain Xoft's or its licensors', and Xoft in no way conveys any right or interest in the Subscription Materials, the Xoft Technology or the Hosted Service other than a limited license to use them in accordance herewith, and (ii) the Subscription Materials, the Xoft Technology and the Hosted Service are works protected by copyright, trade secret, and other proprietary rights and laws.

7. Handling of Customer Data Upon Termination. Customer agrees that following termination of Customer's account and/or use of the Hosted Service, Xoft may immediately deactivate Customer's account and that following a reasonable period of not less than 30 days shall be entitled to delete Customer's account from Xoft's "live" site. Customer further agrees that Xoft shall not be liable to Customer nor to any third party for any termination of Customer access to the Hosted Service or deletion of Customer Data, provided that Xoft is in compliance with the terms of this Section 7.

8. Users: Passwords, Access and Notification. Customer shall authorize access to and assign unique passwords to the number of Users purchased by Customer on the Quote. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed. Customer will be responsible for the confidentiality and use of User's passwords. Customer agrees to immediately notify Xoft if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords.

9. Modifications to Hosted Service. Xoft may make modifications to the Hosted Service or particular components of the Hosted Service from time to time provided that such modifications do not materially degrade any functionality or features of the Hosted Service and Xoft will use commercially reasonable efforts to notify Customer of any material modifications.

10. Suspension for Ongoing Harm. Customer agrees that Xoft may with reasonably contemporaneous notice (which may be made by email or telephone) to Customer suspend Customer's access to the Hosted Service if Xoft reasonably concludes that Customer's Hosted Service is being used to engage in spamming, or illegal activity, and/or use of Customer's Hosted Service is causing immediate, material and ongoing harm to Xoft or others. In the extraordinary event that Xoft suspends Customer's access to the Hosted Service, Xoft will use commercially reasonable efforts to limit the suspension to the offending portion of the Hosted Service and resolve the issues causing the suspension of Hosted Service. Customer agrees that Xoft shall not be liable to Customer nor to any third party for any suspension of the Hosted Service under such circumstances as described in this Section 10.

11. Axxent Treatments. All Axxent treatments by Customer must be performed with a thorough knowledge of radiation physics, proper planning, dosimetric calculations and knowledge of radio-biological effectiveness; therefore, Xoft requires that a radiation therapist/oncologist administer the use of Axxent systems. Xoft does not support the use of Axxent systems by anyone other than radiation professionals (trained and certified).

12. HIPAA Compliance. The parties shall comply with all federal and state laws and regulations regarding the confidentiality of patient information, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"). To the extent required by law, Xoft shall only use and disclose protected health information (as defined by HIPAA) as is minimally necessary to perform its responsibilities hereunder. Furthermore, Xoft shall not disclose any patient information to any third party, except where permitted or required by law or where such disclosure is expressly approved by the patient in writing. In accordance with the regulations under HIPAA, the Customer and Xoft agree to execute a mutually agreed upon Business Associate Agreement. Notwithstanding any provision of this Agreement or

any Business Associate Agreement to the contrary, to the extent that Customer possesses medical data and information of Customer’s patients including to the extent of any proprietary rights in such data and information Customer may have, Customer hereby grants Xoft the right to use and disclose such data on a de-identified basis to third parties, during and after the Term: (a) in furtherance of the performance of Xoft’s responsibilities under this Agreement, and (b) as utilized in, or incorporated into, Xoft’s operations including, without limitation, research, cost analyses, cost comparison studies and for any other purpose to the extent permitted by applicable law.

B. Technical Support

As part of the Hosted Service, Xoft shall provide technical support services to Customer as follows:

Support/Problem Resolution. The Support Staff at Xoft assists Customers with requests using the following steps and procedures to track Customer interactions.

Contacting Xoft Support Services

<u>Support Hotline</u>	US: 877-963-8327
<u>Support Email</u>	support@radionhub.com

Standard Business Hours

Support Representatives answer incoming calls and address cases open in the Xoft Customer Center during standard business hours*of:

Monday	Tuesday	Wednesday	Thursday	Friday
9am – 8pm (Eastern Time)	9am – 8pm (Eastern Time)	9am – 8pm (Eastern Time)	9am – 8pm (Eastern Time)	9am – 8pm (Eastern Time)

**Excluding US Holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day*

Customer may purchase extended hours support if indicated on the Quote.

Designated Customer Contacts

Calls or Xoft Customer Center cases for application or system support purposes should be routed through designated Customer contacts. Doing so ensures prompt and efficient service while maintaining strict confidentiality of employee data. Each Xoft Customer is afforded 1) primary support contacts and (1) back-up contacts. Should these support contacts change, Xoft Support Services must be notified in writing by the senior most Customer contact.