

**Equipment Loan Agreement
Between the Wampanoag Tribe of Gay Head (Aquinnah)
and Tri-Town Ambulance Service**

This Equipment Loan Agreement (“Agreement”) is entered into this _____ day of _____, 2013 between the WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH) (“Tribe”), a federally recognized tribe, and the Towns of Aquinnah, Chilmark and West Tisbury (“the Towns”) each a municipal corporation situated in Commonwealth of Massachusetts.

RECITALS

WHEREAS, the Towns operate an ambulance service, known as Tri-Town Ambulance Service, in accordance with the requirements of Massachusetts General Laws c.111C and rules and regulations of the State Department of Health and Emergency Medical Care Advisory Board; and,

WHEREAS, each Town has acquired an ambulance to be operated jointly for their mutual benefit, and to be garaged in their respective towns; and

WHEREAS, the Tribe is willing to loan two Lucas™ 2 Chest Compression Systems SN-30125199 and SN- 30125195 to the Towns ambulance service, Tri-Town Ambulance Service; and

WHEREAS, the Tribe’s loan of such equipment to the Towns promotes the public health and safety of Dukes County residents, including its tribal residents, by making advanced life support equipment available to the Towns’ ambulance service.

TERMS

1. Loan of Equipment. The Towns agree to accept loan of the Equipment listed in Exhibit “A” subject to the terms and conditions of this Agreement for use by the Tri-Town Ambulance Service in exchange for provision of ambulance service to all tribal residents of Dukes County.
2. Ownership. The Tribe shall maintain ownership of the Equipment at all times.
3. Use of Equipment. The Towns shall use the Equipment as part of its ambulance service and is solely responsible for the proper use and deployment of Equipment, including training personnel in the use of the Equipment. The Towns shall return the Equipment to the Tribe in the same condition as when received by the Towns, reasonable wear and tear excepted. The Towns shall be responsible to the Tribe for replacing any damaged Equipment (reasonable wear and tear

excepted), lost or destroyed due to mishandling by the Towns ambulance service and its employees.

4. Maintenance. The Towns shall be responsible for testing, maintaining and repairing the Equipment in accordance with the manufacturer's recommendations and specifications. The Towns shall notify the Tribe when routine maintenance is scheduled to be performed. Towns shall keep records of maintenance and repairs of the Equipment in accordance with the Towns normal practices for maintaining such records and provide a copy to the Tribe. In the event the Towns become aware that the Equipment is malfunctioning or is in need of repair, the Towns shall remove the Equipment from service and immediately notify the Tribe.

5. Indemnification and Insurance. In consideration for the loan of the Equipment, the Towns agree to indemnify, defend and hold harmless the Tribe, its officers, agents, and employees from and against any and all damages, losses, claims, causes of action, expenses and liabilities arising under this Agreement and Tri-Town Ambulance Service's, its contractors, agents, employees, and volunteer's use of Equipment except where such damages, losses, claims and liabilities arise from the sole active negligence or willful misconduct of the Tribe. This provision shall survive termination of this Agreement. The Towns agree to maintain in force for the duration of the Agreement such insurance as will fully protect the Towns and Tribe from any and all claims of any kind or nature for the damage of property or for personal injury, including death, made by any person whomsoever, that may arise from operations carried on under this contract. The Towns shall add the Tribe as additional insured on the insurance policy.

6. Termination of Agreement. The Tribe or the Towns may terminate this Agreement at any time by providing thirty (30) days written notice of termination. The Equipment shall be returned to the Tribe within thirty (30) days of the effective date of termination.

7. Sovereign Immunity. This agreement shall not be construed as a waiver of the sovereign immunity of the Tribe.

8. Notices. If either party shall desire or be required to give notice to the other, such notice shall be given in writing, and shall be personally delivered or sent by prepaid U.S. mail addressed to the recipient as follows:

Wampanoag Tribe of Gay Head (Aquinnah)
Attn: Chairwoman
20 Black Brook Road
Aquinnah, MA 02535

Tri-Town Ambulance Service

Either party may change its address by giving notice to the other in the manner provided herein.

9. No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit and convenience of the Tribe and the Towns. No person or entity not a party to this Agreement shall be a third party beneficiary to this Agreement and nothing herein shall confer any enforceable rights on non-signatory person or entity.

10. Further Action. The Parties agree to execute all instruments and documents and to take all actions as necessary to complete the loan of the Equipment contemplated by this Agreement.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning the subject matter of this Agreement and superseded any prior agreements, understandings, or negotiations whether oral or written. No modification of this Agreement shall be effective unless set forth in writing and signed by both Parties.

12. Authority. Each party warrants that the individuals signing this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Wampanoag Tribe of Gay Head (Aquinnah).

14. Dispute Resolution. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to the Judicial Arbitration and Mediation Services (JAMS), or its successor, for mediation, and only if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration.

- i. Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration before a sole arbitration. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures (effective March 26, 2007). The arbitrator's decision is final.
- ii. The provisions of this Clause may be enforced by tribal court or federal district court, and the party seeking enforcement shall be entitled to an award

of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered in accordance.

- iii. The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.
- iv. This Agreement shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.
- v. If, at any time, any of the provisions of this Agreement (including, but not limited to, any Attachments, Addendums or Attachments) or the JAMS Streamlined Arbitration Rules and Procedures conflict with the terms of this dispute resolution agreement, the terms of this dispute resolution agreement shall control.

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

Wampanoag Tribe of Gay Head (Aquinnah)
Chairwoman Cheryl Andrews-Maltais

Date

TOWNS

Town of Aquinnah

Date

Town of Chilmark

Date

Town of West Tisbury

Date

EXHIBIT "A"

Equipment List

1. Lucas™ 2 Chest Compression Systems SN- 30125199
2. Lucas™ 2 Chest Compression Systems SN- 30125195