

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Various State Agencies
Monitored By: Department of Administration
Purchasing Division
515 E Musser Street, Room 300
Carson City NV 89701
Contact: Colleen G. Janes
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Phone: (775) 684- 0186 Fax: (775) 684-0188

and

The Remi Group
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Charlotte, NC 28277
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WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective **upon Board of Examiners' approval (anticipated to be March 9, 2010) through June 3, 2014**, unless sooner terminated by either party as specified in paragraph ten (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until **30** calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: NEGOTIATED POINTS
ATTACHMENT BB: INSURANCE SCHEDULE; AND

ATTACHMENT CC: GSA CONTRACT #GS-21F-0093V
ATTACHMENT DD: EQUIPMENT MAINTENANCE CONTRACT

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at the prices listed in GSA Contract # GS-21F-0093V with the total Contract or installments payable monthly, not to exceed a total contract amount of \$5,000,000.00 for the contract term. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. **The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods as submitted to and accepted by the contractor.** Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate,

control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	<u>RAF</u>	_____
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	<u>RAF</u>
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	<u>RAF</u>
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	<u>RAF</u>
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	<u>RAF</u>	_____
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	<u>RAF</u>
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	<u>RAF</u>

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;

Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official;
or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

ATTACHMENT

AA

ATTACHMENT AA
NEGOTIATED POINTS

1. **INVOICING:** Contractor agrees to invoice each participating agency quarterly.
2. **PAYMENTS TO CONTRACTOR:** Quarterly payments will be issued from each participating agency within thirty (30) days of receipt of invoices.
3. **GOVERNMENTAL RESOURCES:** Contractor agrees to minimize use of governmental staff in providing the services under this contract.
4. **DISPUTE RESOLUTION:**

Contractor will continually monitor repair activity and vendor performance to ensure that participating agencies are being charged fair and reasonable prices for service and parts. Contractor will make certain that participating agencies are not charged for service on equipment and parts that are under warranty. Contractor's claims specialists will also see that proper credits due to participating agencies are applied throughout the process.

Should problems arise with a preferred service provider, Contractor will make every effort to work with the service provider to correct and solve any issues. If resolution cannot be made, or if there are repeated issues with a particular service provider, Contractor will review options with the participating agency which could include selecting an alternate service provider.

Signed By:


Robert Fleischacker _____ 2/3/10
Date

General Counsel & Chief Compliance Officer, The Remi Group
Independent's Contractor's Title


Greg Smith _____ 2-4-10
Date

Administrator, Nevada State Purchasing Division
Title

ATTACHMENT

BB

ATTACHMENT BB
INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language:
 "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
 b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

2. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.


Robert Fleischacker _____
Date 2/3/10

General Counsel & Chief Compliance Officer, The Remi Group
Independent's Contractor's Title


Greg Smith _____
Date 2-4-10

Administrator, Nevada State Purchasing Division
Title

RMIns rev 03/08

ATTACHMENT

CC



GENERAL SERVICES ADMINISTRATION

Federal Supply Schedule Authorized Federal Supply Schedule Price List

Online access to contract ordering information, terms, and conditions, up-to-date pricing and the option to create an electronic delivery system are available through GSA *Advantage!*, a menu driven database system. The INTERNET address for GSA *Advantage!* is:
<http://www.gsaadvantage.gov>.

Contract Number: GS-21F-0093V

For more information on ordering from Federal Supply Schedules, click on the FSS Schedules button at <http://www.fss.gsa.gov>

Contract Period: June 4, 2009– June 3, 2014

Business Size: Small Business

**Schedule: 03FAC, Facilities Maintenance and Management
SIN 811-006 Facilities Maintenance and Management Consulting**

Contract Administration:

Chris Steuber

Phone: 704.887.2920

Fax: 704.887.2916

Email: csteuber@theremigroup.com

The Remi Group, LLC

**11325 North Community House Rd, Suite 300
Charlotte, NC 28277**

www.theremigroup.com

Equipment Maintenance Management Program



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Customer Information

1a. Awarded Special Item Number (s):

SIN 811-006, Facilities Maintenance Management & Consulting

1b. Pricing

See price list pages 10 - 11

1c. Job Titles and Descriptions

See page 12

2. Maximum Order:

None

3. Minimum Order:

\$100

4. Geographic Coverage (delivery area):

United States, Canada and Europe

5. Point(s) of Production (city, county, and State or foreign country):

N/A

6. Basic Discount:

26% from total equipment maintenance spend baseline

7. Quantity Discounts:

N/A

8. Prompt Payment Terms:

None

9a. Government purchase cards are accepted at or below the micro-purchase threshold:

Yes

9b. Government purchase cards are accepted above the micro-purchase threshold:

Yes

10. Foreign Items (list items by county or origin):

N/A



11a. Time of Delivery:

N/A

11b. Expedited Delivery:

N/A

11c. Overnight and 2-day Delivery:

N/A

11d. Urgent Requirements:

N/A

12. F.O.B. Point

N/A

13a. Ordering Address:

11325 North Community House Rd, Suite 300
Charlotte, NC 28277

13b. Ordering Procedures:

In accordance with GSA ordering procedures

14. Payment Address:

11325 North Community House Rd, Suite 300
Charlotte, NC 28277

15. Warranty Provision:

N/A

16. Export Packing Charges:

N/A

17. Terms and Conditions of Government purchase card acceptance (any thresholds above the micro-purchase level):

N/A

18. Terms and Conditions of rental, maintenance, and repair:

N/A

19. Terms and Conditions of installation:

N/A



20. Terms and Conditions of repair parts:

N/A

20a. Terms and Conditions for any other services:

N/A

21. List of Service and distribution points:

N/A

22. List of participating dealers:

N/A

23. Preventative maintenance:

N/A

24a. Special Attributes, such as environmental attributes:

N/A

24b. Section 508 compliance information is available on Electronic & Information Technology (EIT) supplies and services:

N/A

25. Duns number:

13-666-2215

26. Notification regarding registration in Central Contractor Registration (CCR) database:

Registered, Cage Code 51LN4, Registration valid through 7/17/10

27. Uncompensated Overtime:

N/A



Corporate Overview

The Remi Group LLC, located in Charlotte, North Carolina, is the nation's leading Equipment Maintenance Management Program (EMMP) administrator. We provide a unique alternative to traditional vendor equipment service agreements. Our program enables agencies and departments to analyze and effectively control their electronic equipment assets while realizing significant savings in their annual equipment maintenance budget. Our program consolidates existing service contracts into ONE comprehensive program eliminating the inefficiencies of multiple vendor service contracts. In addition, The Remi Group program delivers benefits that are not normally available with traditional service agreements.

Unlike typical service agreements offered by manufacturers and third party service vendors, The Remi Group provides a comprehensive Equipment Maintenance Management Program that serves only the needs of your agency or department. We are not affiliated with any Original Equipment Manufacturer, Service Provider, or Leasing Company. Our program is designed to ensure that YOUR agency or department gains the greatest possible return for every dollar invested in equipment assets - best service for the best price!

Program at a Glance:

- Consolidates the management of all equipment assets under ONE cost effective program
- Discount of 26% from total equipment maintenance spend baseline
- Use your preferred service providers
- Centralizes equipment maintenance management
- Online management reports on equipment and vendor performance
- Extends the useful life of all equipment assets by ensuring that equipment is properly maintained
- Aggressively manages the maintenance of your entire equipment portfolio
- Provides a "capped" yearly maintenance budget for all electronic equipment



Program Features

The Remi Group's team of industry professionals will utilize our proprietary equipment maintenance management systems to provide complete management of the EMMP program. This includes risk assessment, engineering and technical support, vendor support and oversight, education and training, invoice processing and direct payment to the service providers.

In conjunction with the financial benefits of this program, The Remi Group will deliver the technical and administrative support necessary to ensure successful implementation of the program beginning with a complete asset inventory. This asset inventory will be entered into our centralized database and will be available via Remi Online (our proprietary customer internet interface). We will also work with your agency or department's staff to establish the EMMP infrastructure necessary to deliver accountability and long-term measurable cost savings.

The Remi Group offers a far-reaching yet focused approach to equipment maintenance management that provides immediate cost savings, long-term financial security, online data management systems, and total program administrative support. The Remi Group works closely with each of our clients- investing significant financial and human capital to deliver a program that meets their specific needs and goals. We believe that our extensive experience in this field combined with our customized management reporting systems and wide range of program options ensures the program will be a success for years to come.

Experience

We offer practical experience earned through years of service in multiple market segments. Since 1998 The Remi Group has successfully administered maintenance management programs for government entities, major hospitals and healthcare organizations, colleges and universities, large grocery store chains, and financial institutions. The Remi Group does not perform any service work on equipment. We have established working relationships with major service vendors, know their capabilities, can identify alternative vendors when appropriate, and have the financial strength to ensure prompt payment of all covered maintenance events. Simply stated, we offer a program that can be tailored to match the exact preferences of your agency or department and have the experience to deliver successful results.

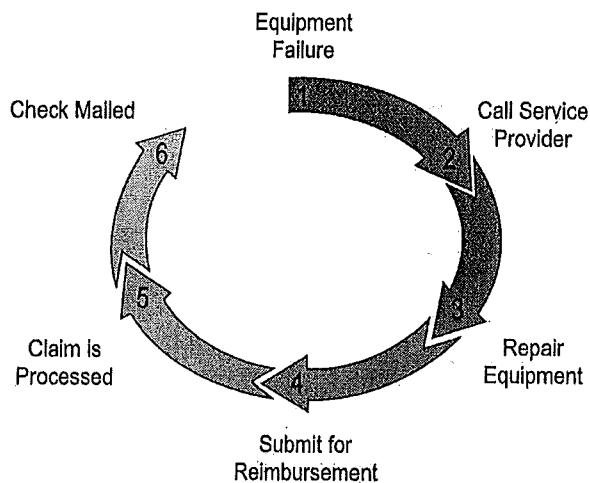
The Remi Group offers an unprecedented level of industry experience and technical expertise that few can rival. The Remi Group is comprised of seasoned maintenance management professionals, risk transfer specialists, and equipment technical experts.

This unique blend of expertise enables The Remi Group to provide your agency or department with a team of highly respected professionals that not only understand your equipment maintenance needs, but have the tested know-how to deliver proven solutions. The Remi Group is the recognized industry leader in developing custom equipment maintenance management solutions for clients across all market segments ... both nationally and internationally.

Technology

The Remi Group leads the industry in delivering customized maintenance management solutions backed by state-of-the-art technology. Remi Online, our proprietary customer internet interface, allows our clients the ability to assess, evaluate, control and act upon all information related to their equipment maintenance management program. All program transactions, equipment maintenance activity, and vendor information is captured and managed by our centralized database EMMA, (Equipment Maintenance Management Application) and is available around-the-clock. Supporting documentation and detailed reports on all covered equipment is available 24x7. This valuable information has given our clients the power to understand their equipment maintenance needs while also assisting them in assessing which service vendors are providing the highest level of service for the money. Our reporting system has also been instrumental in helping our clients make well informed decisions on new equipment purchases.

How the Program Works



Maintenance Contract Evaluation

The Remi Group will work with your agency or department to evaluate in-force vendor service agreements to ensure that equipment service levels, hours of coverage, coverage limitations, and total cost is consistent with industry best practices. Upon



completion of this analysis, The Remi Group will recommend the best service options for that piece of equipment. The goal of this process will be to ensure service quality and equipment uptime, while achieving the greatest return for each dollar invested in the maintenance of your agency or department's equipment.

Vendor Maintenance Oversight

We will provide strict oversight of each covered maintenance event to ensure the service work performed by your chosen vendor is effective and appropriately invoiced. We will review each service report and associated vendor invoice to ensure that charges are appropriate, that your agency or department receives credit for all warranty work, and that there are no unnecessary charges designed to increase the vendor's margins.

Loss Control Services

The Remi Group will constantly monitor covered equipment maintenance cost trends, failure rates, and specific vendor performance to identify cost saving opportunities. When necessary, we will locate alternative service vendors and alternative sources for manufacturer approved parts. Managing vendor performance and ensuring that they are prevented from overcharging your agency or department on a case-by-case basis is critical to long-term program savings. In addition, The Remi Group Engineering Team is available 24X7 for consultation and support on all maintenance/program issues and will assist your agency or department real-time on any specific maintenance event.

Program Training

The Remi Group offers training programs that can be scheduled as needed for all end users at no additional cost. Our training program includes: program operation, Remi Online training, management reporting, and loss control. The training programs are a great value to your agency or department as they provide end users with a detailed understanding of the program's functionality, features, and benefits. End users will be shown how to access valuable management reports that can be used to identify covered equipment and analyze performance trends. We will also provide tips on loss control measures that your agency or department can immediately put into place to dramatically reduce unnecessary maintenance expenditures.

Asset Locate

The only way to keep your agency or department running smoothly is to make sure that the equipment you purchase today will be the right equipment for the needs of tomorrow. The Remi Group provides an equipment purchasing service called Asset Locate. Asset Locate offers a team of highly skilled equipment management professionals that understand your unique equipment needs. Our engineers will consult and assist your agency or department during your new equipment purchase evaluation and will be available to answer any questions that you may have during the procurement process.



Green Initiative

The Remi Group is serious about reducing our footprint on the environment. We are extremely focused on identifying service vendors that offer environmentally preferred products and services. Whenever possible we encourage the use of remanufactured ink and toner cartridges. Our program promotes the reduction of overall paper usage by requesting that all service reports and invoices are remitted via email as opposed to hardcopy.

For more information please visit our website:

www.theremigroup.com



Price List

Basic Discount: Equipment Maintenance Management Program Pricing					
Major Equipment Type Cat.	MFG Maintenance Contract Pricing* (Per Unit or System)	Commercial Discount	MFC Cat.	MFC Discount	GSA Discount
Alarm Systems	\$ 800 - \$54,000	14% - 20%	State & Local Govt.	25%	26%
Analyzers	\$1,200 - \$16,000	6% - 12%	State & Local Govt.	25%	26%
Building Management Systems	\$1,800 - \$65,000	14% - 20%	State & Local Govt.	25%	26%
Biomedical	\$200 - \$36,000	14% - 18%	State & Local Govt.	25%	26%
Computers	\$ 50 - \$300	20% - 24%	State & Local Govt.	25%	26%
Copiers	\$250 - \$85,000	5% - 15%	State & Local Govt.	25%	26%
Data Processing	\$ 500 - \$75,000	20% - 24%	State & Local Govt.	25%	26%
Laboratory	\$1,500 - \$24,000	8% - 14%	State & Local Govt.	25%	26%
Mail Processing	\$ 250 - \$90,000	15% - 20%	State & Local Govt.	25%	26%
Diagnostic Imaging	\$50,000 - \$300,000	12% - 18%	State & Local Govt.	25%	26%
Office Equipment	\$ 100 - \$500	15% - 22%	State & Local Govt.	25%	26%
Security Systems	\$800 - \$45,000	18% - 24%	State & Local Govt.	25%	26%
Telecommunications	\$ 500 - \$230,000	20% - 24%	State & Local Govt.	25%	26%
Testing Equipment	\$200 - \$18,000	12% - 18%	State & Local Govt.	25%	26%
Ultrasound	\$5,000 - \$15,000	16% - 19%	State & Local Govt.	25%	26%
UPS/Power systems	\$250 - \$12,000	19% - 24%	State & Local Govt.	25%	26%
X-Ray General	\$8,000 - \$22,000	13% - 16%	State & Local Govt.	25%	26%
X-Ray Security	\$5,000 - \$40,000	18% - 22%	State & Local Govt.	25%	26%
X-Ray Film Processor	\$2,000 - \$14,000	5% - 10%	State & Local Govt.	25%	26%

* Basis is manufacturer maintenance contract pricing per unit or system based on equipment configuration and maintenance terms. Discount is applied to manufacturer maintenance contract pricing on a per unit or system basis. Discount will be applied to and Manufacturers maintenance catalogue pricing for eligible equipment types. Discount remains in effect as long as the equipment is scheduled on the equipment maintenance management program.



Equipment Maintenance Consulting and Assessment Services							
Labor Category	Commercial Price	MFC Category	MFC Discount	MFC Price	GSA Discount	GSA Price w/o IFF	GSA Price w/IFF
Project Manager	\$105/hr	State & Local Govt.	0%	\$105/hr	2%	\$103/hr	\$104/hr
Sr. Project Analyst	\$85/hr	State & Local Govt.	0%	\$85/hr	2%	\$83/hr	\$84/hr
Project Analyst	\$75/hr	State & Local Govt.	0%	\$75/hr	2%	\$73/hr	\$74/hr
Project Engineer	\$75/hr	State & Local Govt.	0%	\$75/hr	2%	\$73/hr	\$74/hr
Risk Analyst	\$65/hr	State & Local Govt.	0%	\$65/hr	2%	\$63/hr	\$64/hr
Data Entry Specialist	\$40/hr	State & Local Govt.	0%	\$40/hr	2%	\$38/hr	\$37/hr
Admin Support Specialist	\$35/hr	State & Local Govt.	0%	\$35/hr	2%	\$33/hr	\$34/hr

All labor categories associated with equipment maintenance consulting and assessment services are salaried employees and exempt from SCA



Job Titles and Descriptions

Project Manager

Responsibilities:

- Identifies resources needed and assigns individual responsibilities.
- Manages day-to-day operational aspects of the program.
- Responsible for meeting the client's needs and resolving any issues.
- Facilitates client and account team meetings.
- Manages client relationship.
- Responsible for overall management of account team.

Education/Experience:

- Position requires a BS/BA degree and 8 years of experience.

Sr. Project Analyst

Responsibilities:

- Analyzes business issues and challenges of client's organization.
- Reviews clients program requirements, business processes and goals related to proposed solution.
- Works with client personnel to communicate program offering.
- Communicates openly with Project Manager and account team.
- Assists with implementation of program.
- Assists in the facilitation of team and client meeting.
- Develops business relationships with client personnel.
- Manages client expectations effectively.

Education/Experience:

- Position requires a BS/BA degree and 4 years of experience.

Project Analyst

Responsibilities:

- Assists Sr. Project Analyst in analyzing client's current maintenance management situation.
- Responsible for the thoroughness of data collection.
- Assists in communicating program offering to all eligible users.
- Assists with program implementation.
- Fosters and maintains client relationship.
- Works with Risk Analyst to ensure accuracy of equipment schedules.
- Documents, analyzes, and reports pertinent program information.
- Proactively seeks opportunities for additional program savings.

Education/Experience:

- Position requires a BS/BA degree and 4 years of experience.

Project Engineer

Responsibilities:

- Oversees all complex service events.
- Provides technical advice and assistance to claims associates.
- Coordinates all large loss control activities.
- Performs new vendor verifications.
- Maintains vendor database.
- Participates in client/vendor meetings working to resolve program issues.
- Serves as the main technical resource for account team and client.
- Receives and manages loss notification calls from client.
- 24x7 on-call rotation.
- Assists in pre-engineering of equipment for quoting.

Education/Experience:

- Position requires a 4 year Engineering Degree and 4 years of experience.

Risk Analyst

Responsibilities:

- Creates client proposals/quotes to meet specific business needs; as well as standard products.
- Perform detailed analysis of contracts to make specific underwriting decisions.
- Ensures that all underwriting file documentation is complete, accurate, and current.
- Negotiates coverage, price, and custom features with Project Managers and Project Analysts.
- Has a sound understanding of the system.
- Manages the growth of the assigned book of business by producing professional and accurate policy documentation while analyzing losses and growth to determine renewal quotes.
- Some travel is required.

Education/Experience:

- College degree preferred.
- Proficient computer skills necessary, knowledge of Microsoft Office, with Word and Excel a must.
- Must have good math aptitude and strong analytical skills.

Data Entry Specialist

Responsibilities:

- Enter invoices daily to meet 48 hour deadline.
- File processed invoices.
- Scan invoices.
- Coordinate filing of new accounts.
- Understand and utilize claim system.

Education/Experience:



- Basic computer skills required.
- Excellent typing skills, minimum 50 wpm, with attention to detail.
- Data-entry experience is a plus.
- College degree desirable but not required.

Administrative Support Specialist

Responsibilities:

- Responsible for maintaining accurate client equipment schedules.
- Processes endorsement requests.
- Coordinates quote submissions.
- Oversees client relationship.
- Participates in weekly calls to large accounts.
- Responsible for processing change requests on equipment schedules.

Education/Experience:

- College degree preferred.
- Strong customer service skills a must.
- Proficient computer skill; knows Microsoft Office, with Word and Excel a must.

ATTACHMENT

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EQUIPMENT MAINTENANCE AGREEMENT

Various provisions in this Agreement may restrict coverage. Read the entire Equipment Maintenance Agreement carefully to determine rights, duties and the scope of the coverage.

AGREEMENT

In return for **Your** payment of the Annual Fee, **We** provide the coverage described herein subject to all the terms of this Equipment Maintenance Agreement.

COVERAGE PROVIDED

We will indemnify **You** for **Loss** that **You** incur as **Corrective Maintenance Charges** to return **Covered Property** to **Effective Operation** due to a **Precipitating Condition** during the **Agreement Period**.

DEFINITIONS

Throughout this Agreement the words “**You**” and “**Your**” refer to the Client shown on the Coverage Information Page. The words “**We**,” “**Us**,” and “**Our**” refer to the Agreement Provider shown on the Coverage Information Page. The term “**property**” is used interchangeably with “**Equipment**” and “**Item**”.

“**Actual Cash Value**” means the market value of the **Covered Property** or of similar equipment of equivalent age, kind, and functionality at the time of the **Loss**.

“**Agreement**” means this Equipment Maintenance Agreement; Coverage Information Page; Supplemental Coverage Information Page; and Schedule of Covered Equipment.

“**Agreement Period**” means the period from the effective date of this agreement to the expiration date of this agreement as shown on the Coverage Information Page, or its earlier termination date, if any.

“**Corrective Maintenance Charges**” means necessary, standard, and customary charges for services rendered to **You** to restore **Covered Property** to **Effective Operation** including the cost of parts, **Labor**, travel, taxes, and shipping charges.

“**Covered Property**” means **property** owned or leased by **You** or **property** in **Your** care, custody or control, that is shown on the Schedule of Covered Equipment.

“**Deductible**” means the amount shown in Item 2 of the Supplemental Coverage Information Page.

“**Effective Operation**” means the ability of **Covered Property** to render the same or similar service as prior to the development of a **Precipitating Condition** and operating within manufacturer specifications for the device.

“**Labor**” is defined as seven (7) days per week, twenty-four (24) hours per day at the vendor’s prevailing labor rates, not including additional expenses associated with overtime, weekend, or holiday repair.

“**Loss**” means necessary **Corrective Maintenance Charges** incurred by **You** to restore **Covered Property** to **Effective Operation** due to a **Precipitating Condition**. If **You** purchase coverage for **Preventative Maintenance Charges**, which will be reflected on **Your** Schedule of Covered Equipment, then covered **Preventative Maintenance Charges** will be considered a **Loss**, as well.



“**Precipitating Condition**” means an impairment of the **Effective Operation of Covered Property** arising from electrical or mechanical failure.

“**Preventative Maintenance Charges**” means standard and customary charges for preventative maintenance services rendered to **You** upon **Covered Property** including the cost of parts, **Labor**, travel, and taxes. This Agreement does not cover **Preventative Maintenance Charges** unless the coverage has been specifically purchased by **You**, as reflected on **Your** Schedule of Covered Equipment.

“**Service**” means administration of equipment maintenance management programs.

TERMS AND CONDITIONS

1. Aggregate Agreement Liability

We will not be liable for more than the Aggregate Agreement Liability shown on the Supplemental Coverage Information Page.

2. Item Limit of Liability

The most We will pay for any one **Loss** is the **Actual Cash Value** of the **Covered Property** at the time of **Loss**.

3. Deductible

Any amounts We are obligated to pay as a **Loss** under this Agreement shall be reduced by the Deductible amount specified on the Supplemental Coverage Information Page.

4. Agreement Period and Territory

This Agreement applies only to **Losses** that occur:

- a. During the Agreement Period shown on the Coverage Information Page;
- b. Within the effective coverage period for each piece of **Covered Property** as specified on the Schedule of Covered Equipment; and
- c. While the **Covered Property** is within the United States.

5. Reporting Losses for Reimbursement

- a. In order to receive reimbursement of **Corrective Maintenance Charges** or **Preventative Maintenance Charges** incurred as part of a covered **Loss** under this Agreement, **You** must report the **Loss** to **Us** in compliance with all the terms and conditions of this Agreement.
- b. **You** must report the **Loss** to **Us** within the Loss Notification Period specified on the Supplemental Coverage Information Page of this Agreement from the date of repair.
- c. **You** must provide sufficient information to **Us** regarding the **Loss** to enable **Us** to determine if the **Corrective Maintenance Charges** or **Preventative Maintenance Charges** reported are within the scope of coverage defined in this Agreement.
- d. Satisfactory reporting of **Loss** includes, at a minimum, a description of the **Covered Property** involved, a legible copy of the vendor service report, and corresponding vendor invoice.
- e. **You** agree to cooperate and assist in the collection of additional information and documentation necessary to evaluate the facts surrounding any reported **Loss**.
- f. We will not be liable for any **Loss** not reported in compliance with this paragraph (Reporting of Losses for Reimbursement).

6. Replacement of Covered Property

- a. If it is more cost effective to replace **Covered Property** than repair, **You** must report the **Loss** to **Our** Engineering Support Hotline at 877-275-7364 prior to authorizing the replacement of **Covered Property**.
- b. If a failed sub-assembly may necessitate the replacement of an entire system component (for example a failed circuit card necessitating the replacement of an entire console and monitor), **You** must report the **Loss** to **Our** Engineering Support Hotline at 877-275-7364 prior to authorizing the replacement of the entire system component.
- c. If **We** agree that replacement of an **Item** is more cost effective than repair, **You** may substitute property of a similar kind, age, model, and manufacturer. Written authorization must be obtained from **Us** prior to the replacement of any **property**.
- d. **We** will not be liable for any unauthorized replacement of **Covered Property**.

7. Large Loss Notification

- a. If **Corrective Maintenance Charges** or **Preventative Maintenance Charges** may exceed the Large Loss Notification Limit specified on the Supplemental Coverage Information Page of this Agreement, **You** must report the **Loss** to **Our** Engineering Support Hotline at 877-275-7364 prior to authorizing or commencing any service.
- b. **You** agree that **Our** Engineers and Loss Control Specialists will be allowed to manage the **Loss** to ensure service is performed in a cost effective manner. **We** have the right to deploy alternative vendors and source equivalent parts to return the **Covered Property** to **Effective Operation**. **We** agree that any alternative solution **We** propose will use parts and services that comply with the Original Equipment Manufacturer's (OEM) specifications for the **Covered Property**.
- c. **You** have the option to reject **Our** proposed alternative solution. However, **Our** liability to reimburse for **Your Loss** will be limited to the cost of **Our** proposed solution. Any additional **Loss** costs in excess of **Our** proposed solution shall be reimbursed by **You**.
- d. Failure to comply with the terms of this paragraph (7. Large Loss Notification) will render this Agreement null and void as to that **Loss**. However, **Our** right to retain or recover the Annual Fee will not be affected.

8. In-house Repair Reimbursement

- a. **We** agree that members of **Your** staff may perform **Labor** to restore **Covered Property** to **Effective Operation** following a **Loss**.
- b. **You** agree that **Your** staff that performs **Labor** upon **Covered Property** will have the necessary skill, experience, training, and license or manufacturer certification required to perform the **Labor**.
- c. **We** agree to reimburse **Labor** performed by **Your** staff to return **Covered Property** to **Effective Operation** at the rate defined on the Supplemental Coverage Information Page (In-house Repair Labor Reimbursement Rate).
- d. **You** agree to comply with the terms of this Agreement and report any **Loss** involving In-house Repair Reimbursement in compliance with all the terms and conditions of this Agreement.

9. Rental of Substitute Equipment

We agree to reimburse **You** for rental or loaner charges for substitute equipment of like kind, necessitated by a covered **Loss**, for no more than the number of days specified on the Supplemental Coverage Information Page (Rental Reimbursement Limit). The total reimbursement for rental or loaner charges plus **Corrective Maintenance Charges** and **Preventative Maintenance Charges** shall not exceed the **Actual Cash Value** of the **Covered Property** at the time of **Loss**.



10. Preventive Maintenance

If **You** have purchased coverage for **Preventative Maintenance Charges**, as reflected on **Your** Schedule of Covered Equipment, **You** agree that preventative maintenance services will be performed in compliance with the Original Equipment Manufacturer's specifications for the **Covered Property** and at the frequency defined on **Your** Schedule of Covered Equipment. **We** are under no obligation to reimburse for more than the number of preventative maintenance events defined on **Your** Schedule of Covered Equipment. If **You** remove equipment from the Schedule of Covered Equipment or cancel this Agreement, **We** will only cover Preventative Maintenance charges prorated over the period of time of the coverage. By way of example, but not limitation, if the **Equipment** was scheduled to have four (4) preventative maintenance inspections per year and the **Equipment** is removed from the Agreement after six (6) months, the number of prorated preventative maintenance inspections would be two (2) calculated as $(6/12 \times 4)$. **You** will be responsible for any charges exceeding the prorata amount.

11. Loss Settlement

We will not reimburse **You** for more than the **Actual Cash Value** of the **Covered Property** at the time of **Loss**. The **Loss** will be ascertained or estimated on the basis of **Actual Cash Value** of property similar in kind, age, model and manufacturer to the **Covered Property** at the place and time of the **Loss**.

12. Prior Precipitating Condition

We will not cover **Loss** that results from a **Precipitating Condition** that exists prior to the effective date of coverage for the **Item** covered under this Agreement.

13. Protective Safeguards and Physical Environment

You agree to maintain throughout the **Agreement Period** of this Agreement such protective safeguards as were in existence at the time of or installed subsequent to the first effective date of this Agreement. Upon discovery of a **Precipitating Condition**, which may give rise to a claim under this agreement, **You** must take all reasonable steps within **Your** power to minimize the extent of **Loss**. **You** further agree to take due care to maintain a physical environment (levels of temperature, humidity, dust, etc.) in keeping with the manufacturer's recommendation for the **Covered Property**.

14. Alteration of Risk

You must provide **Us** notice in writing regarding any material change varying the facts or circumstances surrounding the **Covered Property**, such as the movement of **Covered Property** or nearby construction. **We** reserve the right to amend this Agreement if there is such Alteration of Risk. Failure to notify **Us** of Alteration of Risk, which results in **Loss** under this Agreement, will render this Agreement null and void as to that **Loss**. However, **Our** right to retain or recover the Annual Fee will not be affected.

15. Our Options

We have the right to any salvage value, exchange credit or replaced hardware as a result of a **Loss** for which **We** have made payment.

16. Agreement Equipment Schedule Changes

- a. During the Agreement term, **You** must request all changes to the Schedule of Covered Equipment in writing. If **We** accept the requested change, the effective date of the change will be either the date **You** notify **Us** in writing or an agreed future date. **You** agree that any **Equipment You**



request to be added for coverage will be in good working order with no known **Precipitating Condition**.

- b. All Agreement Equipment Schedule Changes acceptable to **Us** will be bound by a written modification to the Agreement issued by **Us**. **You** agree to pay any additional Annual Fees **We** charge for the Agreement Equipment Schedule Changes.
- c. **We** are not liable for any **Loss** or return Annual Fee associated with unauthorized equipment schedule changes not reported in accordance with this paragraph (Agreement Equipment Schedule Changes).

17. Concealment or Fraud

At **Our** discretion, **We** may cancel or void the Agreement if **You** have:

- a. Intentionally concealed or misrepresented any material fact or circumstance; or
- b. Engaged in fraudulent conduct or false swearing relating to this Agreement.

18. Warranties, Maintenance Contracts, Agreements

- a. This Agreement shall not apply to any **Loss** to any **Covered Property** to the extent that such **Loss** is covered under any other warranty, guarantee, maintenance contract, service contract, or insurance contract.
- b. The terms and conditions of any warranty, maintenance contract, service agreement, or any other contract or agreement that **You** enter into with any third party does not bind **Us** related to **Covered Property**, unless **We** consent to the agreement in writing.
- c. **We** make no warranty with respect to services or parts provided by vendors.

19. Purchase of Goods and Services

Notwithstanding any other provision of this Agreement, **We** shall purchase, as **Your** agent and not on **Our** own behalf, all goods and services to be provided by outside vendors under this Agreement as may otherwise be subject to sales or other tax if purchased by **Us**. The title and benefit of all such goods and services shall pass directly from such vendors to **You**.

20. Examination of Records, Inspections

We may examine and audit **Your** books and records that relate to this Agreement during the Agreement period and for three years after the Agreement has expired. **We** have the right to inspect **Your Covered Property** and the associated physical environment at any time during the Agreement. This inspection may be made by **Us** or may be made on **Our** behalf. **You** agree to submit to examination under oath in matters connected with the **Loss** as often as **We** reasonably request and give **Us** sworn statements of the answers, if necessary. If more than one person is examined, **We** have the right to examine and receive statements separately and not in the presence of others.

21. Conformity with Statute

When a condition of this coverage is in conflict with an applicable law, that condition is amended to conform to that law.

22. Assignment

This Agreement may not be assigned without **Our** written approval.

23. Cooperation

You must cooperate with **Us** in performing all acts required by this Agreement.

24. Cancellation

- a. **You** may cancel this Agreement by providing thirty (30) days written notice to **Us** and payment for the amount applicable for the time period that the Agreement was in effect.

- b. **We** may cancel this Agreement by written notice sent to **You** at **Your** last mailing address known to **Us**. If notice of cancellation is mailed, proof of mailing will be sufficient proof of notice.
- c. If **We** cancel this Agreement for any reason other than nonpayment of fees, **We** will give **You** written notice at least thirty (30) days in advance of cancellation. The notice will state the time that the cancellation is to take effect. If **We** cancel this Agreement for nonpayment of fees, cancellation shall be effective on the date that prior paid fees are fully earned by **Us**.
- d. **Your** return fees, if any, will be calculated according to **Our** rules. It will be refunded with the cancellation notice or within a reasonable time. Payment or tender of the unearned fees is not a condition of cancellation.

25. Appraisal

If **You** and **We** do not agree on the amount of the **Loss**, the **Actual Cash Value** of the **Covered Property** or the cost to repair or replace the **Covered Property** either party may demand that these amounts be determined by appraisal.

If either party makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within twenty (20) days after the receipt of the written demand. The two appraisers will select a competent, impartial umpire within fifteen (15) days, **You** or **We** can ask a judge of a court in the state where the appraisal is pending to select an umpire.

The appraisers will determine:

- a. the amount of the **Loss**;
- b. the **Actual Cash Value** of the **Covered Property**; and
- c. the cost to repair or replace the **Covered Property**.

Each amount will be stated separately.

If the appraisers submit a written report of an agreement to **Us**, the agreement will establish these amounts. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. A written agreement by any two of these three will establish the amounts stated above.

Each appraiser will be paid by the party selecting that appraiser. The compensation of the umpire and any other expenses of the appraisal will be shared equally by **You** and **Us**.

26. Contractual Liability/Service Contract Reimbursement Insurance

We retain the sole and absolute right to change, without notice, the insurance company providing contractual liability/service contract reimbursement insurance under this Agreement to another insurance company with an A-rating or better in the current Best's Insurance Reports published by A.M. Best Company.

27. Disputes

No suit to recover for a **Loss** may be brought against **Us** unless:

- a. all of the terms of this Agreement have been complied with; and
- b. the suit is commenced within one year after the date of **Loss**.

28. Limitation of Liability and Warranties

- a. **Liability Limitation** - In no event shall **We** be liable for any incidental, special, statutory, indirect or consequential damages, including, but not limited to, loss profits, revenue, or down time. **Our** liability for any damage arising from a cause of action in contract, tort or otherwise shall be limited to the amount of premium **You** have paid to **Us** during the preceding 12 months.
- b. **Warranty** - **We** warrant to **You** that the Services provided under this Agreement shall be performed in a professional manner by qualified personnel. If the Services have not been so performed and **We** receive from **You** within thirty (30) days of the occurrence a written detailed report detailing the basis of the non-conformance and agree with **You**, **We** shall re-perform those



Services. This remedy is **Your** sole and exclusive remedy and is in lieu of any other rights or remedies **You** may have against **Us** with respect to non-conformance of the Services.

EXCEPT AS PROVIDED IN THIS PARAGRAPH 28, WE MAKE NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ALL SUCH WARRANTIES ARE SPECIFICALLY DISCLAIMED.

29. Reserved

30. Offset

We may offset any amount owed to **Us** against any pending or future claim payments.

EXCLUDED CAUSES OF LOSS

We will not reimburse **You** for those **Corrective Maintenance Charges** caused directly or indirectly by any of the following regardless of any other cause or event that contributes concurrently or in any sequence to the **Loss**:

1. Any cause of **Loss** customarily covered under the following commercial insurance forms:
 - a. Boiler & Machinery;
 - b. Automobile;
 - c. Crime;
 - d. Electronics Data Processing;
 - e. Business Interruption or Time Element;
 - f. Fire & Extended Coverage; or
 - g. Named Peril, Special or All Risk Property;
2. Flood, sewer or drain back-up or earth movement, including earthquake, landslide, mudflow, and earth sinking, rising or shifting;
3. Insect or vermin damage;
4. Obsolescence of **Covered Property**;
5. War, including undeclared war, civil war, insurrection, rebellion, revolution, terrorism, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear, biological, or chemical weapon(s) will be deemed a warlike act even if accidental.
6. Radioactive Contamination, meaning:
 - a. Ionizing radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - b. The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - c. Any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
7. Vandalism, defacement, malicious mischief, abuse, or misuse;
8. Willful, fraudulent or dishonest act or omission by **You**;
9. Ordinances, regulations, laws, court actions, or accreditation testing;
10. Software or software virus; or
11. Vendor, Contractor, or In-House Maintenance or Operator error, faulty workmanship, improper installation, improper maintenance, negligence or fraud.

EXCLUDED COSTS

Unless the coverages defined below are specifically purchased by **You**, which will be identified on **Your** Schedule of Covered Equipment, **We** will not pay any cost associated with:

1. **Preventative Maintenance Charges**;
2. Emergency service fees or special service assessments beyond normal labor and travel expenses;
3. Repair or replacement of operating supplies, consumables, disposables, expendables, or accessory items;
4. Expenses incurred when no problem is found with the equipment;
5. Improvements, updates, upgrades, cosmetic restorations, preferential equipment adjustments, retrofits, overhauls, refurbishment, or correcting conditions of obsolescence and all costs of repairing or replacing parts when the discovery of deficiencies occurs as a result or in conjunction with any of these;
6. Expenses incurred for functions and services normally performed by the equipment operator;
7. Expenses or fees associated with the re-stocking of unused parts;
8. Maintaining or repairing **Covered Property** mounting hardware, supports, fixtures, or furniture;
9. Trace gas analysis, safety checks, certifications, or calibrations;
10. Repair or replacement of X-Ray tubes, pick-up (PMT) tubes, image intensifiers, digital detectors, glassware, transducers, probes, MRI magnets, coils, cryogenics, crystals, wave guides, shock wave generators, magnetrons, klystrons, thyratrons, fiber optics, laser systems, laser bench, mammo paddles, lights, uninterrupted power supplies (UPS), drums, including copier drums and laser imaging drums, equalization, repair, or replacement of batteries, battery cells or electrodes;
11. Loaner charges or rent for replacement CT's, PET Scanners, MRI's, Nuclear Medicine Labs, Cath Labs, or Oncology Systems;
12. Repairs and expenses associated with de-installation, movement, or installation of **Covered Property**;
13. Delay, loss of market, loss of use, or business interruption;
14. **We** will pay only for the cost to repair the impaired sub-assembly if there is a **Loss** to **Covered Property** that is comprised of many sub-assemblies;
15. **We** will not pay for the part of a **Loss** that has been paid by someone else; or
16. **We** will not reimburse for **Corrective Maintenance Charges** or **Preventative Maintenance Charges** incurred for service performed after the expiration date defined on the Coverage Information Page.