# 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 **Loss**es 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 (6/12x4). **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 covered by 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** will only cancel for nonpayment of fees, **We** will give **You** written notice at least thirty (30) days in advance of cancellation. **We** will provide **You** written notice for nonpayment of fees past due thirty (30) days. **You** will have seven (7) days from receipt of this notice to make payment or arrangements for payment. If **You** do not make payment within seven (7) days, **We** will cancel this Agreement. 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**.
c. **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 two years 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 27, 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. Late Charges**

Payments not received when due may be subject to a late payment charge of one and one-half percent (1.5%) per month, or the highest percentage permitted by law. Interest shall accrue commencing on the date of **Our** delinquency notice to **You**.

**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, cryogens, 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.