

144



# New Hampshire Veterans Home

139 Winter Street  
Tilton, NH 03276



Margaret D. LaBrecque  
Commandant

Telephone: (603) 527-4400  
Fax : (603) 527-4402

May 26, 2014

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

*sole source*

### REQUESTED ACTION

Authorize the New Hampshire Veterans Home to enter into a **SOLE SOURCE** contract with Simplex Grinnell, (VC# 175878), 35 Progress Ave, Nashua, NH 03062-3301 in the amount of \$3,019.80 to replace four failed audio/visuals and troubleshoot a reoccurring ground fault at the NH Veterans Home from the date of Governor and Council approval through June 30, 2014.

Funding Source 100% General Fund.

Funds are available in account titled 05-43-43-430010-5358, New Hampshire Veterans Home, Custodial Services, as follows:

	<u>FY 2014</u>
#-048-500226 Bldg & Grds -Contractual	\$3,019.80

### EXPLANATION

Whereas this equipment is proprietary to Simplex it requires technicians with computer based software to access the programming levels and to make changes to the system. Because this is not a service that can be performed by any other vendor other than Simplex, this item is **SOLE SOURCE**.

This contract provides for the replacement of four failed audio/visuals that are not operating however, this does not affect the overall functionality of the system as there are a total of 244 functioning units. The Home's alarm system is currently operational and the facility/patients are fully protected. In addition, a ground fault will require troubleshooting specifically; the fire panel wiring is touching building steel and creating a ground fault. The fire alarm panel supervises the wiring and will create a trouble light if the wiring goes 0 volts to ground or 28 volts to ground. All devices in the signal circuit work, the entire system still works as documented in our annual test in December 2013. The ground fault indicates that Simplex needs to go over that signal circuit inch by inch to find where the wire is touching building steel and replace or repair the wire.

This contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be appreciated.

Respectfully Submitted,

*Margaret D LaBrecque*

Margaret D. LaBrecque  
Commandant

Subject: Replace audio/visuals and troubleshoot ground fault on Node 3.

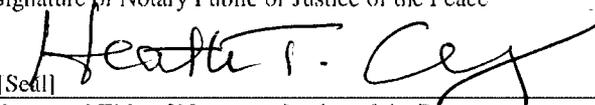
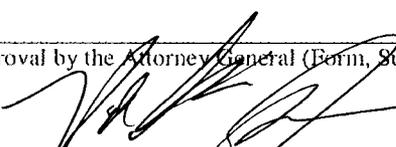
FORM NUMBER P-37 ( version 1/09)

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name <u>New Hampshire Veterans Home</u>		1.2 State Agency Address <u>139 Winter Street, Tilton NH 03276</u>	
1.3 Contractor Name <u>Simplex Grinnell</u>		1.4 Contractor Address <u>35 Progress Ave, Nashua NH 03062</u>	
1.5 Contractor Phone Number <u>603-521-1147</u>	1.6 Account Number <u>10-04300-53580000-500226</u>	1.7 Completion Date <u>06/30/2014</u>	1.8 Price Limitation <u>\$3,019.80</u>
1.9 Contracting Officer for State Agency <u>Mellisa Milione, Director of Administration</u>		1.10 State Agency Telephone Number <u>603-527-4400</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Bill Camp, District General Manager</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsborough</u> On <u>4-7-14</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>HEATHER T. COFFEY, Notary Public</u> <u>My Commission Expires July 15, 2014</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Melissa Milione, Director of Administration</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/20/14</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

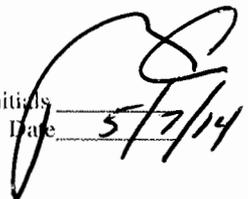
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials

Date

  
5/7/14

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

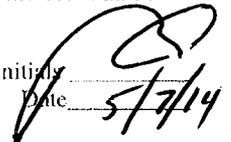
14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials  
Date

  
5/27/14

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials   
Date 5/17/14

**EXHIBIT A**  
**SCOPE OF SERVICES**

**A. Scope Of Services:**

The New Hampshire Veterans Home proposes to enter into an agreement with a contractor to replace four failed Simplex audio/visual systems and repair a reoccurring ground fault.

1. The Contractor shall service the following:
  - a. Replace four failed audio/visual systems
  - b. Troubleshoot a reoccurring ground fault on Node 3
2. The Contractor shall secure and pay for all permits, inspections and licenses necessary for the execution of his work.
3. The Contractor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform in the manner within the time specified. The Contractor shall complete the entire work to the satisfaction of the State and in accordance with the specifications herein mentioned, at the price herein agreed upon. All the work, labor, and equipment to be done and furnished under this contract, shall be done and finished strictly pursuant to, and in conformity with the specifications described herein and any directions of the State representatives as given from time to time during the progress of the work, under the terms of this contract.
4. The Contractor shall at his own expense, wherever necessary or required, furnish safety devices and take such other precautions as may be necessary to protect life and property.
5. The Contractor shall bear all losses resulting to him or to the Owner on account of the amount or character of the work, or because of the nature of the area in or on which the work being done is different from what was estimated or expected, or account of the weather, elements or other causes.
6. Unsatisfactory response to any or all of the listed services or requirements will be a basis for immediate termination of the contract.
7. The NH Veterans Home reserves the right to terminate this contract at any given time with a 30 day written notice.
8. The contract and all obligations of the parties there under, shall become effective upon acceptance by the State and shall be completed in their entirety prior to a specified date (Block 1.6). Any work undertaken by the contractor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Contractor for any such work. The term of the contract shall be effective upon Governor and Executive Council approval through June 30, 2014.

**EXHIBIT B  
BUDGET AND METHOD OF PAYMENT**

**A. Charges not to exceed \$3,019.80:**

**TOTAL NOT TO EXCEED \$3,019.80**

**Invoicing:**

The Contractor shall invoice the NHVH as service is performed. All invoices must include detail of work performed and price. Please include one original invoice and one copy. Payment will not be due until thirty (30) days after the invoice has been received at the NHVH Business Office.

**Payment:**

**Payment may be withheld if work is not performed as described under SCOPE OF SERVICES, and the immediate termination of this contract could occur.**

Unless otherwise noted on the proposal, payment will be due thirty (30) days after invoicing. A check will be issued through the State Treasurer and forwarded to the Vendor within fourteen (14) days after processing begins at the agency level. Payments will be for only what has been agreed to in the contract. The NHVH does not pay late charges or interest.

**EXHIBIT C  
SPECIAL PROVISIONS**

There are no special Provisions



Fire & Security

SimplexGrinnell

SimplexGrinnell LP
35 Progress Ave.
Nashua, NH 03062

Tel: (603) 521-1147
Fax: (603) 386-6250

PROPOSAL AND INSTALLATION AGREEMENT

SimplexGrinnell Contract # CL27839558
Salesperson: Craig LaPointe - 115660
Date: 1/22/2014
Customer: New Hampshire Veterans Home
Job Location: Same

SimplexGrinnell ("Company"), for and in consideration of the prices herein named, proposes to furnish the work, and/or materials hereinafter described, subject to the terms and conditions of this Agreement.

SCOPE OF WORK: [X]

Per fire alarm inspection dated 12/23/13:

(4) Audio/visuals failed - SLC9-3 Tarr South Dining Room, SLC5-3 Tarr North across from room 244, #49 LEDU ground floor inside stairwell and #38 Franklin Pierce Unit.

This proposal includes labor and material to replace these A/Vs and to troubleshoot a reoccurring ground fault on Node 3

Labor - \$2,240.00
Parts - \$660.80
Truck/Fuel Charge - \$119.00

\*\*\*If Labor exceeds 16 hours, a separate quote will be sent\*\*\*

SimplexGrinnell can not be held liable for failure of components that are extremely old, defective, inoperative or obsolete. Work is to be performed between the hours of 7am-5pm, Monday through Friday (Holidays excluded). Price quote is valid for 60 days.

Payment NET 10 [ ] NET 30 [X] C.O.D. [ ]
DEPOSIT: \$
[ ] Time and Material [ ] Price Not to Exceed \$ [ ] [X] Fixed Price of \$ 3,019.80 BALANCE DUE: \$
AMEX [ ] MC/Visa [ ] Discover [ ] CREDIT CARD# [ ] Expiration Date [ ] Name on Credit Card [ ]

IMPORTANT NOTICE TO CUSTOMER

In accepting this Proposal, Customer agrees to the terms and conditions contained herein including those on the following page of this Agreement and any attachments or riders attached hereto that contain additional terms and conditions.

Customer

SIMPLEXGRINNELL LP

By: \_\_\_\_\_
Authorized Signature
Name:
Title:

By: [Signature]
Name: Craig LaPointe
Title: Systems Integrity Rep

[Signature]
5/7/14

## SERVICE AGREEMENT General Terms and Conditions

1. **Payment.** Work performed on a time and material basis shall be at the then-prevailing Company rate for material, labor, and related items, in effect at the time supplied under this Agreement. Further, in the event that this Agreement is executed on a "price not to exceed" basis, the price to Customer shall be lesser of: 1. The limit price quoted, OR 2. The actual cumulative billing based on the aforementioned prevailing rate. If this Agreement extends beyond one year, SimplexGrinnell may increase prices upon notice to the Customer. Unless otherwise agreed in writing between the parties, Customer shall pay Company within thirty (30) days of the date of this Agreement. Customer agrees to pay all taxes, permits, and other charges, including but not limited to state and local sales and excise taxes, however designated, levied or based on the service charges pursuant to this Agreement. Company shall have the right, at Company's sole discretion, to stop performing any Services if Customer fails to make any payment when due, until the account is current. The Customer's failure to make payment when due is a material breach of this Agreement until the account is current.

2. **Code Compliance.** Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in the Scope of Work.

3. **Limitation Of Liability; Limitations Of Remedy.** It is understood and agreed by the Customer that Company is not an insurer and that insurance coverage, if any, shall be obtained by the Customer and that amounts payable to company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of the Customer's property and the property of others located on the premises. Customer agrees to look exclusively to the Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no warranty or Warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert.

It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that, Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability shall be limited to an amount equal to the Agreement price (as increased by the price for any additional work) or where the time and material payment term is selected, Customer's time and material payments to Company. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Such sum shall be complete and exclusive. If Customer desires Company to assume greater liability, the parties shall amend this Agreement by attaching a rider setting forth the amount of additional liability and the additional amount payable by the Customer for the assumption by Company of such greater liability, provided however that such rider shall in no way be interpreted to hold Company as an insurer. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S) OR ANY OF ITS COMPONENT PARTS BY THE CUSTOMER OR ANY THIRD PARTY. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE USE, LOSS OF THE USE, PERFORMANCE, OR FAILURE OF THE COVERED SYSTEM(S) TO PERFORM. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of company, whether direct or indirect, company's employees, agents, officers and directors.

4. **General Provisions.** Customer has selected the service level desired after considering and balancing various levels of protection afforded, and their related costs. Customer acknowledges and agrees that by this Agreement, Company, unless specifically stated, does not undertake any obligation to maintain or render Customer's system or equipment as Year 2000 compliant, which shall mean, capable of correctly handling the processing of calendar dates before or after December 31, 1999. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement.

Company will perform the services described in the Scope of Work section ("Services") for one or more system(s) or equipment as described in the Scope of Work section or the listed attachments ("Covered System(s)"). The Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes the Covered System(s) are in operational and maintainable condition as of the Agreement date. If, upon initial inspection, Company determines that repairs are recommended, repair charges will be submitted for approval prior to any work. Should such repair work be declined Company shall be relieved from any and all liability arising therefrom. UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED

UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS WHICH ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING.

The Customer further agrees to:

- provide Company access to the Covered System(s) to be serviced,
- supply suitable electrical service, heat, heat tracing, and adequate water supply,
- provide a safe work environment, in the event of an emergency or Covered System(s) failure, take reasonable safety precautions to protect against personal injury, death, and property damage. Such measures shall continue until the Covered System(s) are operational. Customer shall notify Company as soon as practical under the circumstances.

5. **Repair Services (If Selected by Customer).** Where Customer expressly includes repair, replacement, and emergency response services in the Scope of Work section on the Agreement page, such services apply only to the components or equipment of the Covered System(s). The Agreement price does not include repairs to the Covered System(s) recommended by Company during the initial inspection, for which Company will submit independent pricing to customer and as to which Company will not proceed until Customer authorizes such work and approves the pricing. Repair or replacement of non-maintainable parts of the Covered System(s) including, but not limited to, unit cabinets, insulating material, electrical wiring, structural supports, and all other non-moving parts, is not included under this Agreement.

6. **System Equipment.** The purchase of equipment or peripheral devices, (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

7. **Reports.** Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current Report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The Report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

8. **Hazardous Materials.** Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- "permit confined space," as defined by OSHA,
- risk of infectious disease,
- need for air monitoring, respiratory protection, or other medical risk,
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions".

Company shall have the right to rely on the representations listed above. If hazardous conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control and Company shall have no obligation to further perform in the area where the hazardous conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company.

This Agreement does not provide for the cost of capture, containment or disposal of any hazardous waste materials, or hazardous materials, encountered in any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Company shall not be responsible for the testing, removal or disposal of such hazardous materials.

9. **Limited Warranty.** COMPANY WARRANTS THAT ITS WORKMANSHIP AND MATERIAL FURNISHED UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS FOR A PERIOD OF

NINETY (90) DAYS FROM THE DATE OF FURNISHING. Where Company provides product or equipment of others, Company will warrant the product or equipment only to the extent warranted by such third party. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER. COMPANY MAKES NO WARRANTY OR REPRESENTATION, AND UNDERTAKES NO OBLIGATION TO ENSURE BY THE SERVICES PERFORMED UNDER THIS AGREEMENT, THAT COMPANY'S PRODUCTS OR THE SYSTEMS OR EQUIPMENT OF THE CUSTOMER WILL CORRECTLY HANDLE THE PROCESSING OF CALENDAR DATES BEFORE OR AFTER DECEMBER 31, 1999.

10. **Indemnity.** Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, including specifically any damages resulting from the exposure of workers to Hazardous Conditions whether or not Customer notifies Company of the existence of said hazardous conditions, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action.

11. **Insurance.** Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

12. **Exclusions/Force Majeure.** This Agreement expressly excludes, without limitation, reloading of, upgrading, and maintaining computer software, making repairs or replacements necessitated by reason of negligence or misuse of components or equipment, vandalism, corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")), power failure, current fluctuation, failure due to non-Company installation, parts, service, attachments, or devices, lightning, electrical storm, or other severe weather, water, accident, fire, acts of God or any other cause external to the Covered System(s). This Agreement does not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. If Emergency Services are expressly included in the scope of work section, the Agreement price does not include travel expenses. Company shall not be responsible for delays or failure to render services due to causes beyond its control, including but not limited to material shortages, work stoppages, fires, civil disobedience or unrest, severe weather, fire or any other cause beyond the control of Company.

13. **One-Year Limitation On Actions; Choice Of Law.** It is agreed that no suit, or cause of action or other proceeding shall be brought against either party more than one (1) year after the accrual of the cause of action or one (1) year after the claim arises, whichever is shorter, whether known or unknown when the claim arises or whether based on tort, contract, or any other legal theory. The laws of Massachusetts shall govern the validity, enforceability, and interpretation of this Agreement.

14. **Assignment.** Customer may not assign this Agreement without Company's prior written consent. Company may assign this Agreement to an affiliate without obtaining Customer's consent.

15. **Entire Agreement.** The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement") to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions of sale for all equipment and services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company.

16. **Severability.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

17. **Legal Fees.** Company shall be entitled to recover from the Customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement.



# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire do hereby certify that SIMPLEXGRINNELL LP is doing business in New Hampshire as SIMPLEXGRINNELL LIMITED PARTNERSHIP a(n) Delaware Limited Partnership registered to transact business in New Hampshire on April 19, 2001. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 7<sup>th</sup> day of March, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**tyco**

Fire &  
Security

**SimplexGrinnell**

SimplexGrinnell LP  
35 Progress Ave  
Nashua, NH 03062

(603) 886-1100  
Fax: (603) 598-2567

[www.simplexgrinnell.com](http://www.simplexgrinnell.com)

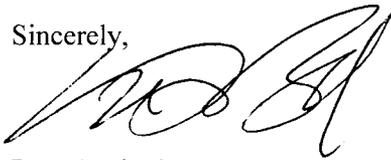
Date: May 7, 2014

**Certificate of Authority / Existence**

To whom it may concern,

William Card, District General Manager, is authorized to enter into contracts on SimplexGrinnell's behalf.

Sincerely,



Dean Bedard  
Total Service Manager  
SimplexGrinnell



MURIEL R. MOTARD, Notary Public  
My Commission Expires July 15, 2014



AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



## ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA Inc.		NAMED INSURED SimplexGrinnell LP 35 Progress Avenue Nashua, NH 03062 United States	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

REGARDING NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS:

This endorsement modifies the notice of cancellation of insurance provided hereunder:

Should any of the above described policies be cancelled, other than for non-payment of premium, before the expiration date thereof, 30 days advice of cancellation will be delivered to certificate holders in accordance with the policy endorsements.

All other terms and conditions of this policy remain unchanged.

**FOR QUESTIONS REGARDING THIS CERTIFICATE OF INSURANCE CONTACT:**  
 Theresa Thuillier (Email: [tthuillier@simplexgrinnell.com](mailto:tthuillier@simplexgrinnell.com) Phone: 603-521-1175)

THIS CERTIFICATE OF INSURANCE WAS GENERATED AND DELIVERED BY EXIGIS RiskWorks® rm.Certificates®  
 Business Process Automation for Risk Management, Insurance, and Trade Finance  
 To learn what EXIGIS can do for your business visit [exigis.com](http://exigis.com) or call 800.928.1963