

Missouri Child Care Business Information Solution

Provider Equipment Agreement

WHEREAS, Controltec, Inc. (the “Contractor”) manages and operates a statewide computer information system, titled Missouri Child Care Business Information Solution (CCBIS), to facilitate the collection of child care time and attendance information, which is used in the preparation of publicly funded child care payments; and

WHEREAS, you (the “Provider”) are the recipient of publicly funded child care funds, and will be utilizing CCBIS to collect child care time and attendance information;

WHEREAS, the Contractor is providing the Provider, as part of CCBIS, with a Samsung Galaxy Tab A8 or comparable attendance device (the “Attendance Device”) used to sign/check in and sign/check out a child or children for which care is being provided , and a stand; and

WHEREAS, the Provider’s acknowledgement to this Equipment Agreement (the “Agreement”) is a requirement for the Contractor to supply the Attendance Device to the Provider.

Please read this Agreement carefully before using the Attendance Device. By using the Attendance Device in any manner, the Provider acknowledges that it has read and agrees to be legally bound by and a party to, without modification, the Agreement detailed herein. The individual reviewing this Agreement on behalf of the Provider and accepting the Agreement on behalf of the Provider represents and warrants that he or she has the authority to agree to the Agreement on the Provider’s behalf. Use of the Attendance Device is expressly conditioned upon the Provider’s assent to all of the terms of the Agreement.

Now therefore it is agreed between the Contractor and the Provider as follows:

A. Contractor Responsibilities

1. The Contractor has delivered the necessary equipment and installation instructions to the Provider’s most recent address supplied by the state of Missouri (the “Provider’s Address”).
2. The Contractor shall provide toll free telephone support as well as email support for all issues related to the devices and stands and operation thereof. For any and all questions related to the installation, use, maintenance or operation of the Attendance Device the Provider may contact the Contractor at SupportMo@controltec.com or (833) 866-1709.
3. The Contractor shall be responsible for any required repair, replacement or upgrade of the Attendance Device in order to maintain the proper functioning of the Attendance Device throughout the duration of this Agreement subject to the limitations detailed in section B of this Agreement.

B. Provider Responsibilities

1. The Provider agrees to be responsible for any loss or damage to the device, whether or not such loss or damage results from its negligence, or that of its employees, or whether such loss or damage occurs through theft or intentional acts of its employees or third parties. In the event of loss or damage to the Attendance Device, the Provider will be billed in accordance with the schedule and given the option to set up a payment agreement within thirty (30) days of the loss or damage to the Attendance Device. The replacement POS Device and Mobile Device cost will be at a minimum of \$252.12 up to \$275.49 per device depending on the length of time in possession.
2. The Provider agrees that the Contractor or its designee shall have free and clear access to the Attendance Device at all reasonable times for the purpose of maintenance, repair, inspection or removal.
3. The Provider agrees to not make or attempt to make any repairs to the Attendance Device and that it shall promptly notify Contractor in the event that an Attendance Device is not functioning properly.
4. The Provider agrees to hold the Contractor harmless from any claim, demand or cause of action for damages or injury to any person based on a defect, latent or apparent, in the Attendance Device.
5. The Provider agrees not to sell, rent, pledge, use as collateral or dispose of the Attendance Device.

6. The Provider agrees to return to the Contractor the Attendance Device provided by the Contractor pursuant to this Agreement: (a) should the Provider cease operations; (b) should the Provider cease being contracted with DSS to be paid to provide publicly funded child care; (c) upon the Contractor's written request; or (d) upon the termination of this Agreement. In such an event, the Contractor will either: (i) retrieve the POS devices and mobile devices within ten (10) business days through a personal visit to the child care provider's facility; or (ii) the Contractor will prepare a pre-paid shipping label to Contractor's Support Center and provide such label to the Provider. The Provider will use the existing box, attach the label and take the package to the nearest post office. The Contractor's Support Center can track the status of the returned package using a US Post Office Tracking number. All packages should be returned to the Controltec Support Center, 2550 Corporate Exchange Drive, Suite 203, Columbus, Ohio 43231.
7. The Provider agrees to keep the Equipment in the provider's sole possession and control at all times. The Equipment shall not be moved from the Provider address(es) reflected on record with the Contractor without prior authorization from Contractor.

C. Limitation of Liability

Contractor will not be responsible or liable for any cost, expense or damage arising out of the use of the Attendance Device by Provider including, but not limited to, lost profits or damages to persons or property. Provider will bear all risks including the entire risk of loss, theft, damage or destruction of the Attendance Device and all liability for the use, possession, operation, storage and condition of the Attendance Device; provided, however, that Provider will not be liable for personal injury and/or damages to property resulting from the gross negligence or willful acts of the Contractor, its employees, subcontractors or agents.

D. Indemnification

Provider will indemnify and hold Contractor, its parent corporations, affiliates, employees, subcontractors and agents harmless from all losses, costs, expenses and damages, including attorneys' fees, incurred because of or incident to the Attendance Device or the use, possession, operation, storage and condition thereof; provided, however, that Provider's obligation to indemnify and hold harmless will not apply in cases in which the Contractor will be found liable for personal injury and/or damage to property resulting from the gross negligence or willful acts of the Contractor, its employees, subcontractors or agents.

E. Warranties

CONTRACTOR WARRANTS THAT SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED IN ACCORDANCE WITH INDUSTRY STANDARDS BY QUALIFIED PERSONNEL IN A TIMELY AND PROFESSIONAL MANNER.

CONTRACTOR MAKES NO WARRANTIES REGARDING THE FUNCTIONALITY, PERFORMANCE OR SAFETY OF THE ATTENDANCE DEVICE. THE ONLY WARRANTIES APPLICABLE TO THE ATTENDANCE DEVICE ARE THOSE MADE BY THE MANUFACTURER OF THE ATTENDANCE DEVICE.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY CONTRACTOR WITH RESPECT TO THE SERVICES AND ATTENDANCE DEVICE PROVIDED PURSUANT TO THIS AGREEMENT. CONTRACTOR MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

F. Governing Laws

This Agreement will be governed by and construed in accordance with the Laws of the State of Missouri and any action commenced hereunder shall be brought in State of Missouri. Further, Provider consents to the jurisdiction of the courts located in State of Missouri.

G. Assignment

Neither this Agreement, nor any right or obligation thereunder, shall be assigned to third parties by the Provider without the prior written consent of Contractor.

H. Independent Contractors. The parties shall, at all times, be independent contractors, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the parties.

I. Termination/Modification

1. This Agreement may be modified at any time by the Contractor with thirty (30) days' written notice to the Provider. If the Provider rejects the amendment in a written notice delivered to the Contractor, then this Agreement will be deemed terminated at that point in time and the Attendance Device will be collected in accordance with Section B, paragraph 2 or 6 of this Agreement.
2. This Agreement may be terminated by either party. In such case, the terminating party shall give written notice to the other party not less than thirty (30) days prior to the date upon which termination shall become effective.
3. Should the Contractor determine that Federal or State funds are unavailable for maintenance of the Attendance Device; the Contractor may deem this Agreement terminated immediately. The Contractor agrees to give notice to the Provider as soon as it becomes aware that funds are unavailable to maintain the Attendance Device, resulting in the termination of this Agreement. In the event of such termination, the device shall be retrieved by the Contractor as set forth in Section B, paragraph 2 or 6 of this Agreement.

J. Notifications. Any notices to be provided pursuant to this Agreement shall be in writing and: (i) if being provided to the Provider, shall be sent to the Provider's Address; and (ii) if being provided to the Contractor, shall be sent to Controltec, Inc., 2550 Corporate Exchange Drive, Suite 203, Columbus, OH 43231, Attention: Operations Manager. Notices will be deemed delivered: (a) if via email, upon the written acknowledgement of receipt by the recipient; (b) five (5) days after mailing by certified mail, return receipt requested; (c) two business days after delivery to a nationally recognized overnight delivery service (e.g., FedEx, UPS, DHL); or (d) upon personal delivery.

K. Entire Agreement

This Agreement supersedes any and all prior representations, conditions, warranties, understandings, proposals, or previous agreements between the parties hereto, either oral or written relating to the matters of this Agreement hereunder and constitutes the sole, full and complete agreement between the parties.