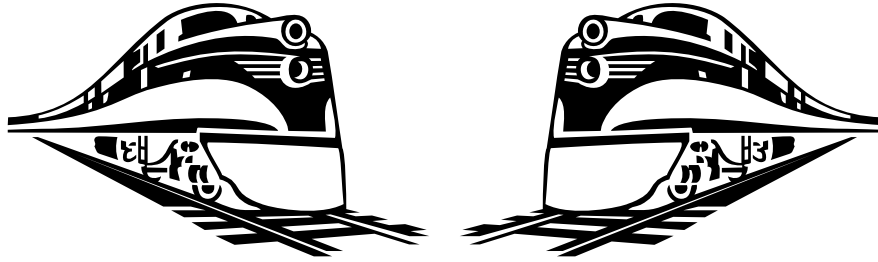


# **Rj Corman**

## **Derailment Services, LLC**



# **Subcontractor**

## **Master Agreement**

**2009**

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This is an Agreement to establish the terms for the purchase of goods and/or services by R. J. Corman Derailment Services, LLC, who is subsequently referred to herein as "RJCDs" and \_\_\_\_\_, whose taxpayer identification number is \_\_\_\_\_, and whose physical address is \_\_\_\_\_ is subsequently referred to herein as "Subcontractor".

1. General Provisions. When RJCDs purchases, leases or otherwise obtains from the Subcontractor, and the Subcontractor sells, leases, furnishes or otherwise supplies goods and/or services to RJCDs, said transactions will be at the prices and rates and on the other terms and conditions set out in this Agreement and in Exhibit A, as attached hereto and incorporated as a part of this Agreement, which Exhibit A may be modified or amended from time to time, upon ninety (90) days written notice to RJCDs and the written and executed acceptance of the same by RJCDs, after which the ordering of goods and/or services by RJCDs from the Subcontractor shall be deemed to be acceptance of such modifications or amendments.

2. Requirements for Payment. In addition to having satisfied all of its other required contractual obligations the Subcontractor shall comply with invoicing requirements as follows

A. Authorization and documentation. The Subcontractor must have an RJCDs Accounts Payable Department Vendor Verification prior to supplying any goods and/or services. The Subcontractor must have a Purchase Order Number for each job or project, and that Purchase Order Number must appear on any invoice from the Subcontractor for that job or project. The original invoice sent to RJCDs must be line itemed so as to show equipment, labor and material charges separately. If any of the Subcontractor's equipment or personnel were released prior to completion of the job or project, or the applicable invoicing period, a copy of RJCDs' Release Statement or Statements showing the date and time of each release and the personnel and equipment then released must accompany the Subcontractor's invoice. If an invoice is not accompanied by such a copy, RJCDs' copy shall be conclusively presumed to be correct, and payment shall be made on the basis of that copy only. All invoices must also be accompanied by: (1) fully completed daily RJCDs work reports, in the form attached hereto as Exhibit B, detailing the equipment and labor used for each specific day; (2) a complete listing and schedule of all of the Subcontractor's mark-ups showing the actual price to the Subcontractor and the Subcontractor's price to RJCDs by either the hour, daily, weekly, or monthly rates; and (3) copies of all delivery receipts as required by numerical paragraph 13 of this Agreement. The supporting documents must be completed sufficiently to permits RJCDs' accounts payable personnel to readily identify and track each invoice line item from the supporting document upon which the item is based. FAILURE TO SUBMIT ALL REQUIRED SUPPORTING DOCUMENTATION, FULLY COMPLETED, WILL RESULT IN A DELAY IN PAYMENT OF THE INVOICE, AND THE SUBCONTRACTOR WAIVES ANY CLAIM FOR LATE PAYMENT RESULTING FROM THE SUBCONTRACTOR'S FAILURE TO COMPLY WITH THIS REQUIREMENT.

B. Invoicing. The invoicing period shall be for seven (7) days, ending at 11:59 p.m. on Thursday of each week. All invoices and required supporting documentation for any invoicing period must be *received* by RJCDs no later than the *earlier of* two (2) business days following the completion of the Subcontractor's contract for the job or project for which the invoice is being submitted or 10:30 a.m., prevailing local time, on the Monday following the invoicing period for which the invoice is submitted. Invoices shall be deemed to be received by

RJCDS when actually delivered, with all required supporting documents, to the following address:

RJ Corman Derailment Services, LLC  
Accounts Payable Dept.  
101 R. J. Corman Drive  
P.O. Box 770  
Nicholasville, KY 40340-0770  
Telephone: (859) 881-2400 ext. "0"

3. Payment terms. When all requirements for payment have been satisfied, RJCDS shall make payment to the Subcontractor no later than the earlier of five (5) business days after RJCDS is compensated by its client for that portion of the job or project for which the invoiced goods and/or services were supplied; or sixty (60) business days following the satisfaction of those requirements.

4. Representations and Warranties as to Goods and Services. The Subcontractor represents and warrants that it owns and has the right to lease and sell any goods furnished pursuant to this Agreement, free of any security interests or other claims, that the Subcontractor has all licenses, permits, franchises and other authorizations required for the lease or sale of any goods and/or services furnished to RJCDS pursuant to this Agreement, and that, unless otherwise specified in this Agreement, all such goods are new, merchantable, suitable for their intended purpose, and carry with them the benefit of all manufacturer's warranties.

5. Representations and Warranties as to Capabilities. The Subcontractor recognizes that the ordering of goods and/or services by RJCDS pursuant to this Agreement will ordinarily be the result of emergency situations and the Subcontractor represents and warrants that it has and will maintain throughout the term of this Agreement the capability of "immediate emergency response" as that term is customarily used in the railroad derailment services industry and that all goods and/or services ordered by RJCDS pursuant to this Agreement shall, unless specified to the contrary by RJCDS, be delivered and/or performed on such an immediate emergency response basis.

6. Representations and Warranties as to Workforce Qualifications. The Subcontractor represents and warrants that it and all individuals supplying goods and/or services pursuant to this agreement are lawfully present in the country in which the work is being done, under conditions which permit them to lawfully do the work; are fully trained to do the work and have all Federal Railroad Administration Roadworker Safety Training, licenses, certificates, permits, consents and memberships, and otherwise meet all requirements for doing so. RJCDS reserves the right to terminate the Subcontractor's services at any time on any job or project, if, in RJCDS' sole discretion, RJCDS determines that the Subcontractor's work is not acceptable in any way. Subcontractor shall be paid for any goods and/or services performed and delivered prior to such termination. Such termination shall be for that job or project only, and shall not terminate this Agreement

7. Representations and Warranties as to Subcontractor's Insurance. The Subcontractor represents and warrants that for all times during which the Subcontractor or its employees are engaged in providing goods and/or services pursuant to this Agreement, the Subcontractor will have in full force and effect all workers' compensation insurance or other demonstration of workers' compensation financial responsibility as may be required by all jurisdictions in which such goods and/or services are being provided; comprehensive general liability insurance coverage with a contractual liability endorsement for this Agreement with bodily injury and property damage combined single limit of not less than \$1,000,000.00 per occurrence; and automotive liability insurance covering owned, non-owned and hired motorized equipment with bodily injury and property damage combined single limit of not less than \$1,000,000.00 per accident. Except for worker's compensation insurance, all policies of insurance required to be maintained by the Subcontractor pursuant to this Agreement shall provide a waiver of subrogation against RJCDS and its customers and shall name RJCDS as an insured. Not less frequently

than annually, and as often as RJCDS may otherwise reasonably require, the Subcontractor shall provide RJCDS updated certificates of insurance, which certificates, except for workers' compensation insurance, shall show RJCDS as an additional insured.

8. Subcontractor's Status as Independent Contractor. RJCDS shall have no right or duty of supervision over the Subcontractor or any of its employees other than the right of final approval of the goods and/or services furnished pursuant to this Agreement; the Subcontractor's status at all times shall be that of an independent contractor; the Subcontractor shall not hold itself out to be an agent or affiliate of RJCDS; and neither the Subcontractor nor its employees shall be deemed to be agents or employees of RJCDS for any purpose whatsoever. Notwithstanding any of the foregoing, the Subcontractor shall forthwith remove any of its employees from any RJCDS jobsite upon instructions by RJCDS to do so.

9. Indemnification. The Subcontractor shall defend, indemnify and hold harmless RJCDS and its directors, officers, employees, agents from any and all claims or demands whatsoever that may be made against RJCDS arising from the goods and/or services provided hereunder, except as to claims based on RJCDS willful misconduct or wanton negligence; including, but not limited to, claims sounding in trespass, damage to the person or property of others, and damage to the environment; and shall keep and maintain in effect insurance covering any liability of client under this paragraph in an amount of not less than \$1,000,000.00. For purposes of this paragraph any action or omission to act by RJCDS taken or omitted at the direction of the onsite representative of RJCDS' client shall not constitute willful misconduct or wanton negligence. If any such claim or demand arises in part from the acts or omissions of RJCDS or others, and in part from the acts or omissions of the Subcontractor shall indemnify and hold RJCDS, its officers and employees harmless for that *pro rata* portion of such claim, damages, costs and expenses as are attributable to the acts or omissions of the Subcontractor, its agents and employees.

10. Business Ethics. The Subcontractor shall not offer or give, and RJCDS shall not solicit or accept, any gratuities, kickbacks or any other form of compensation or enticement in return for any amount or level of business usage of the Subcontractor.

11. Audit. The Subcontractor shall create correct, accurate and complete records of all work done for RJCDS and its client(s) and of the business relationship between RJCDS and the Subcontractor, including, but not limited to, timesheets, job records, invoices, supporting documentation, supervisors' logs and reports and similar documents and shall keep and maintain said records for a period of not less than three (3) years following the completion of the work to which the records pertain. RJCDS and its client(s) shall have the right, upon ten (10) days written notice and during normal business hours, to have access to said records and to audit the same. Any and all charge or payment discrepancies revealed by any such audit shall be corrected within sixty (60) days from the completion of the audit, and no payment or release made or given prior to such audit shall serve as a bar to the correction of any such discrepancy.

12. Equipment Charges. Charges for any equipment supplied by the Subcontractor pursuant to this Agreement shall begin at the later of: (1) when the equipment is delivered to the jobsite or to RJCDS' designated point of delivery and (2) when the equipment is fully operational and ready for service. Such charges shall end at the later of: (1) the time at which the equipment is actually released and (2) if notice of intent to release has been given by RJCDS to the Subcontractor, the time specified in said notice that the equipment is to be released.

13. Equipment Delivery and Condition. All equipment, including attachments and accessories for the same, furnished by the Subcontractor shall be delivered in a timely manner, in good operating condition, with all operational components and safety features installed and functioning correctly. All equipment furnished by the Subcontractor and having a fair market value in excess of \$1,000.00, shall be accompanied by a multiple copy delivery receipt, which shall identify the equipment, and all attachments and accessories delivered with the equipment, and which receipt shall include a statement of the fair market value of the equipment at the time of delivery. Two copies of that receipt, endorsed by both RJCDS and by the Subcontractor's agent, shall be kept by the Subcontractor, and one such copy shall be

kept by RJCDS' field representative. One of the copies kept by the Subcontractor shall be included with the Subcontractor's invoice supporting documents submitted with the Subcontractor's invoice for the period during which the equipment was delivered. RJCDS shall have the right to reject any equipment that is not delivered by the date and time for which it was ordered and to reject any equipment that RJCDS, in its sole discretion, deems unfit for service on the job or project for which it was supplied. RJCDS shall have no responsibility whatsoever as to equipment which is supplied with an operator by the Subcontractor. If the Subcontractor supplies equipment only, RJCDS shall have the right, at the time of delivery, to inspect the equipment and to document, by photographs or otherwise, any and all existing wear, damage, and missing or incomplete components. As to such equipment, if it accepts the same, RJCDS shall return the equipment only in as good condition as received, subject to reasonable wear and tear, and shall have no responsibility whatsoever for any part of such equipment that was damaged, missing or inoperative at the time of delivery. As to any equipment which is not delivered in a timely manner and ready for service, the Subcontractor shall be subject to a penalty equal to the greater of twenty percent (20%) of the standard hourly rate for such equipment for each hour that the equipment was unavailable for service or one hundred and ten percent (110%) RJCDS' actual cost of obtaining substitute equipment.

14. Conditional Option to Purchase Equipment. As to any piece of equipment having a fair market value in excess of \$1,000.00, if at any point in the performance of any given subcontract, the Subcontractor's charges to RJCDS for that equipment, exclusive of all operator charges for the same, equal fifty percent (50%) of the Subcontractor's statement of the fair market value of the equipment at the time of delivery, RJCDS may purchase said equipment for the Subcontractor's stated fair market value at the time of delivery by giving the Subcontractor written notice of its intention to do so, in which event fifty percent (50%) of the Subcontractor's charges to RJCDS for that equipment, excluding operator charges for the same, accruing prior to such notice shall be, upon payment by RJCDS, applied to the purchase price. Payment for any equipment for which such notice is given shall be made in full not later than ten (10) days following the giving of such notice. The Subcontractor shall not encumber or permit any encumbrance to remain on any piece of equipment so as to defeat the rights of RJCDS under this paragraph, and this Agreement shall be deemed to grant to RJCDS a security interest in any piece of equipment as to which RJCDS has given notice of its intention to purchase, sufficient to protect the right of RJCDS to purchase the equipment free and clear of any and all claims of third parties. In the event that any equipment is the subject of any prior security interest at the time such notice is given, RJCDS may, at its election, pay that portion of the purchase price equal to the amount of such prior security interest directly to the holder of the same.

15. Risk of Loss. Until and unless RJCDS elected to purchase, and has paid the full purchase price for, any piece of equipment supplied by the Subcontractor pursuant to this Agreement the risk of loss of any and all equipment supplied by the Subcontractor pursuant to this Agreement shall remain with the Subcontractor, and RJCDS shall not be liable to the Subcontractor to such loss, except to the extent that the direct and proximate cause of such loss was the negligent, willful or wanton act of RJCDS.

16. Release and Return of Equipment. As to equipment furnished or supplied by the Subcontractor with an operator the equipment may be released by RJCDS delivering a statement of release to the operator. As to equipment furnished or supplied by the Subcontractor without an operator, RJCDS shall give the Subcontractor telephonic or electronic notice of its intent to release the equipment, which notice shall be given not less than one (1) hour for each thirty (30) miles of distance between the jobsite at which the equipment is to be released and the closer of the Subcontractor's facility from which the equipment was delivered or the closest facility of the Subcontractor having the reasonable capacity to pick up the equipment to be released. If the Subcontractor fails to appear and retrieve equipment at the time specified in a notice of intent to release, the equipment shall nevertheless be deemed released at that time for all purposes of this Agreement, and RJCDS may, at its sole option, photograph or otherwise document the location and condition of the equipment at the time of release, after which it may leave the equipment at

the place specified in said notice, without any further obligation or liability for the equipment, or for loss of or damage to the same, or keep one or more of RJCDS' personnel at the site of the equipment, at a charge of \$200 per person per hour until retrieval of the equipment by the Subcontractor, which amount may be deducted from any subsequent invoice amount otherwise payable by RJCDS to the Subcontractor. All rental and other charges for any equipment supplied by the Subcontractor shall end when that equipment is released as provided in this paragraph.

17. Termination. The Subcontractor or RJCDS may terminate this Agreement at any time by giving ninety (90) days written notice of such termination. During the term of this Agreement, and in the event of such termination for a period of one hundred-eighty (180) days thereafter, the Subcontractor shall not directly or indirectly sell any goods and/or services to clients of RJCDS without the written consent of RJCDS.

18. Lien Waiver. In the event and to the extent that performance by the Subcontractor pursuant to this Agreement includes the supplying of labor/and or materials for the improvement of any real estate owned by any third party, the Subcontractor agrees to look solely to RJCDS for the payment for such labor and/or materials and waives any right to any lien on said real estate which it might otherwise have. Any such third party is a beneficiary of this provision and may enforce the same in its own name.

19. Assignment and Further Subcontracting. No performance by the Subcontractor/Subcontractor pursuant to this Agreement shall be assigned or further subcontracted, including the subcontracting of labor or equipment, without the written consent of RJCDS, the granting or withholding of which shall be in the sole discretion of RJCDS. It shall be deemed to be a condition of any such consent that the proposed assignee or further subcontractor shall agree and acknowledge that: it waives any right to any lien on any real estate which it might otherwise have and shall look solely to the Subcontractor for any compensation to which it may become entitled; that the Subcontractor and the proposed assignee or further subcontractor shall fully and truthfully disclose to RJCDS all terms and conditions of the proposed assignment or further subcontract; that the assignee or further subcontractor shall disclose its markup on all items to be furnished by it; that the terms and conditions of this Agreement applicable to the Subcontractor and any equipment supplied by the Subcontractor are fully applicable to the assignee or further subcontractor and to any equipment supplied by it; and that any further assignment or subcontracting beyond the initial assignment or subcontract by the Subcontractor named herein shall constitute a breach of and default under this Agreement and said initial assignment or subcontract. The leasing of any equipment for a period in excess of seven (7) days must be pre-approved in writing by the President of RJCDS.

20. Interruption of Work. No disagreement between the Subcontractor and RJCDS shall provide any basis for the Subcontractor to interrupt its work on any job or project without the written consent of RJCDS. In lieu of such interruption, the Subcontractor shall file a demand for arbitration under the Rules of the American Arbitration, to which arbitration RJCDS consents and agrees.

21. Confidentiality. The Subcontractor recognizes and acknowledges that the terms and conditions of this Agreement are confidential and proprietary information of RJCDS and that the disclosure of said terms and conditions or the use of the knowledge of said terms and conditions for any purpose other than the performance of this Agreement by the Subcontractor would irreparably harm RJCDS in its trade and business relationships, and the Subcontractors covenants and agrees that it will not disclose said terms and conditions to any third party without the express written consent of RJCDS and that it will not use its knowledge of said terms and conditions for any purpose other than its performance under this Agreement. The Subcontractor further agrees that it will not, without the prior written permission of RJCDS, publish any reference to this Agreement or the business relationships hereby created, or use the existence of this Agreement or said relationships, in any commercial manner extraneous hereto.

22. Restrictive Covenants. The Subcontractor covenants and agrees that for a period of one hundred eighty (180) following the provision of any goods and/or services to RJCDS, the Subcontractor shall not,

without the prior written consent of RJCDS, solicit for employment any person who was employed by RJCDS at the time of the provision of such goods and/or services, nor shall the Subcontractor, during the same period and without the prior written agreement of RJCDS, contract directly with any entity as to which the Subcontractor has provided goods and/or services as a subcontractor of RJCDS's direct contract. The Subcontractor recognizes and agrees that that arbitration would not provide an adequate forum for the enforcement of either of these covenants and that monetary damages would not provide an adequate remedy for a breach or violation of either of them.

23. **Governing Law and Venue.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky, and any dispute not resolved by arbitration pursuant to paragraph 20, above, and any other action arising in any manner from this Agreement or the performance of this Agreement shall be litigated, if at all, in the Circuit Court of Jessamine County, Kentucky.

24. **Attorneys' Fees and Expenses.** In the event that litigation is necessary to enforce this Agreement or any provision hereof, the prevailing party shall, as a part of such litigation, recover its costs and attorneys' fees as incurred in connection with the same.

25. **Headings.** Paragraph headings are for convenience only and are not a part of the substantive provisions of this Agreement.

26. **Partial Invalidity.** If any provision of this Agreement is invalid, such invalidity will not cause the Agreement as a whole to be invalid, and the Agreement shall be construed and enforced so to most nearly effectuate the intentions of the parties, as determined solely from the four corners of the Agreement, including the language of the invalid provision.

27. **Modification or Amendment.** Other than as set out in paragraph 1 above, no modification, amendment, abandonment or substitution of this Agreement shall be valid or binding on RJCDS unless in writing duly executed by RJCDS, and the failure of RJCDS to protest, object to or reject any attempt by the Subcontractor to alter or amend any term hereof by any subsequent writing not executed by RJCDS shall not constitute implied acceptance of such alteration or amendment, even if RJCDS proceeds with a transaction after having received such subsequent writing, except as expressly provided in paragraph 1, above.

28. **Effective Date.** This Agreement shall become effective on the earlier of the date of its execution by the Subcontractor or the date on which the Subcontractor commences performance hereunder.

DATED: \_\_\_\_\_, 200\_\_.

R.J. CORMAN DERAILMENT SERVICES, LLC

\_\_\_\_\_  
(SUBCONTRACTOR COMPANY NAME MUST CONFORM IN ALL RESPECTS TO NAME IN AGREEMENT HEADING)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_