

## ARCOS MASTER SERVICE AGREEMENT

This Master Service Agreement ("**Agreement**"), between **ARCOS LLC** d/b/a Automated Roster Callout System Company LLC ("**ARCOS**"), 445 Hutchinson Ave., Suite 600, Columbus, Ohio 43235 and **City of Riverside**, a California charter city and municipal corporation ("**Customer**"), having a principal address at 3025 Madison Street, Riverside, California 92504, is effective as of as of the date of final signature affixed, below ("**Effective Date**"), and sets forth the terms and conditions under which the parties agree that Customer may, pursuant to one or more separately executed Work Orders, obtain licenses to use the ARCOS Products and Services listed on the Work Orders. ARCOS and Customer may be referred to individually as a "**Party**" and collectively as "**Parties**" in this Agreement.

This Agreement shall consist of this Master Service Agreement, any exhibits or attachments, and all Work Orders executed subsequent to the Effective Date of this Agreement. This Agreement is effective only upon full execution by both Parties. By signing below, each Party agrees to the terms of this Agreement.

### **GENERAL TERMS AND CONDITIONS** **DEFINITIONS**

**"Add-on Features/Modules"** means enhancements of the ARCOS Products that are released by ARCOS subsequent to the date of the applicable Work Order that contains new product functionality and features of the ARCOS Products.

**"Affiliate"** means an individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, or any other entity (each an "**Entity**") that directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another Entity. An Entity "**controls**" any Entity in which it has the power to vote, directly or indirectly, 50% or more of the voting interests in such Entity or, in the case of a partnership, if it is a general partner.

**"ARCOS Products"** means the ARCOS System, Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions, ARCOS Resource Assist, Software, third party software, hardware, network, and the interfaces necessary to deliver technology products and services by ARCOS, which may be installed on Customer hardware or delivered over the Internet, in each case as more fully described in the applicable Work Order. The ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions may be licensed by ARCOS to Customer for Customer's use over the Internet or for Customer to install and operate on its technology systems and networks.

**"ARCOS Resource Assist"** means the platform for automating the exchange of resources between contractors and utilities along with the management and release of those contracted resources if licensed pursuant to Work Order 0001. If licensed by Customer, ARCOS Resource Assist shall be considered a part of the ARCOS System.

**"ARCOS System"** means the Software, third party software, hardware, network, and the interfaces necessary to deliver ARCOS technology products and services by ARCOS over the Internet as more fully described in Work Order 0001.

**"Confidential Information"** shall have the meaning set forth in Section 6.

**“Consulting and Implementation Services”** shall mean the services provided by ARCOS to Customer as part of the configuration, implementation, and training for the ARCOS Products as may be set forth in the Work Order(s) as applicable.

**“Customer Data”** means all data that Customer enters into or supplies for process on the ARCOS Products; provided, however, Customer Data shall not include any information regarding contractors, vendors or other third parties that is entered by Customer into ARCOS Resource Assist.

**“De-Identified Data”** shall have the meaning as defined in Section 6.3.

**“Documentation”** shall mean such manuals and other standard end user materials, whether in written, printed, electronic or other format, that ARCOS generally makes available to its customers related to the functionality, operation and use of the ARCOS Products, including without limitation, all user, technical support and training materials related to the Services and/or the ARCOS Products but specifically excluding any material deemed Confidential Information by ARCOS.

**“Intellectual Property Rights”** means all US and foreign patents, patent applications, copyrights, trademarks, trade names, trade secrets, inventions, business models, know how, industrial processes, computer program code, designs, product designs, research, brand development, message positioning and other industrial or intangible property rights of a similar nature, and other Confidential Information.

**“Services”** means the services ordered by Customer and accepted by ARCOS pursuant to a Work Order. Depending on the Work Order, such Services may include providing access and use of the ARCOS System and the hosted portions of the ARCOS Damage Assessment, Mobile Inspection, and/or SMART location tracking solutions to authorized User Accounts, Consulting and Implementation Services and Support Services.

**“Software”** means ARCOS proprietary computer programs in object code form or firmware that is either provided to Customer or hosted by ARCOS and provided to Customer over the Internet, in each case which is owned or licensed by ARCOS and licensed to Customer under the terms of this Agreement.

**“Support Services”** shall mean the maintenance and support services provided by ARCOS to Customer under an applicable Work Order.

**“Transition Plan”** shall have the meaning as defined in Section 12.5.2.

**“Updates”** means bug fixes, error corrections, workarounds, modifications, and certain enhancements, including any related Documentation, released during the term of the applicable Work Order that ARCOS determines in its reasonable discretion to make generally available to its customers who receive basic support and maintenance services for the ARCOS Products and specifically excludes Add-on Features/Modules.

**“User Accounts”** mean persons authorized by Customer who use or access the ARCOS Products.

**“Work Order”** shall mean a written order by Customer for any Services accepted by ARCOS and executed by both Parties, which shall be subject to the terms and conditions of this Agreement and which, at a minimum, contains a description of the work, the obligations and responsibilities of each Party, the charges and fees for any Services, the commencement date and term of such Work Order.

## **1. SERVICES.**

**1.1 Services.** ARCOS will provide to Customer the Services described in an applicable Work Order. Each Work Order will be consecutively numbered, become a part of this Agreement, and will be independent of and have no impact upon the provisions of any other Work Order. Unless otherwise mutually agreed in writing, in the event of a conflict between the provisions of this Agreement and any Work Order, the provisions of the Work Order shall prevail. In the event of a conflict between the

provisions of any Work Order, the provisions of the most recent Work Order shall prevail. ARCOS may utilize third party service providers to perform certain of the Services, such as internet service providers and data hosting providers.

1.2 **Delivery of Services.** ARCOS will provide the Services on a non-exclusive basis, in accordance with the Service Level Agreements attached as an attachment to the applicable Work Order, in accordance with the time schedule set forth in the applicable Work Order and upon the terms and conditions of this Agreement.

1.3 **Consulting and Implementation Services.** ARCOS will use reasonable efforts to ensure that while its staff is on the Customer's premises, they conform to the Customer's normal codes of staff and security practices as Customer will notify to ARCOS in writing. Customer reserves the right to request that ARCOS remove immediately from Customer's premises any ARCOS personnel or any subcontractor retained by ARCOS in connection with the Services or any of such subcontractor's personnel who, in Customer's reasonable discretion, pose any threat to security, health or safety of Customer, its property, its customers or the public, or whose conduct adversely affects the performance of the Services or reflects unfavorably upon Customer. ARCOS shall remove any such personnel or subcontractor, who are on-site at Customer's premises, upon written request by Customer, and upon such removal, ARCOS will use commercially reasonable efforts to find a replacement reasonably acceptable to Customer.

1.4 **ARCOS Products.** The following terms apply regarding Customer's subscription for access to and use of the ARCOS Products and regarding Customer's license to use the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions:

1.4.1 **User Accounts; Customer use of ARCOS Products.**

1.4.1.1 **Passwords/Single Sign On.** ARCOS will provide Customer with a single sign on functionality for its User Accounts for which Customer has paid the applicable fees. Customer will be responsible for the administration of all end user login names and passwords for the purpose of authenticating and authorizing access by end users to the ARCOS Products. Customer will maintain the confidentiality of all User Account information. For ARCOS Resource Assist, end users may be contractors or other vendors who are invited to interact with Customer via the ARCOS Resource Assist platform.

1.4.1.2 **Content.** Customer is solely responsible for the content of its transmissions involving the ARCOS Products. Customer agrees not to use any of the ARCOS Products (a) for illegal purposes or in any illegal manner or (b) to interfere with or disrupt other ARCOS network users, network services or network equipment. Interference or disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the network.

1.4.1.3 **Terms of Use Agreement.** Customer shall require that its employee users, vendor invitees (or any other end users) of the ARCOS System abide by the ARCOS Terms of Use—shown as a link in the banner of certain pages of the ARCOS System—as a condition of accessing or using the ARCOS System. The Terms of Use for ARCOS Resource Assist may have different terms than the standard ARCOS System Terms of Use due to the different functionality. Each person first attempting to use the ARCOS System shall be required to agree to those ARCOS Terms of Use by clicking "I Agree" when prompted by the ARCOS System. However, the ARCOS Terms of Use shall not apply to Customer; they shall only apply to Customer's employees or other end users in such end user's individual capacity. As between Customer and ARCOS, the terms of the ARCOS Terms of Use shall have no effect and shall in no way change the terms of this Agreement or any Work Order.

1.4.2 **Equipment for ARCOS System.** Customer is solely responsible for acquiring and maintaining all computer hardware and software, telephones, mobile devices, and other equipment, and all communications and other services needed for access to and use of the ARCOS System.

1.4.3 **Equipment, Operations and Functionality for ARCOS Damage Assessment, Mobile Inspection, and/or sSMART Location Tracking Solutions.** Customer is solely responsible for acquiring and maintaining all computer hardware, software, telephones, mobile devices, and other equipment, and all communications and other services needed to install and use the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions, which requirements are further set forth at: [https://qa.rostermonster.com/arcos/help/doc/ARCOS\\_Core.htm](https://qa.rostermonster.com/arcos/help/doc/ARCOS_Core.htm) \ "t=General%2FSystem\_Requirements.htm. Customer's license to use the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions shall include the functionality for the various ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions modules that are listed in the applicable Work Order. Certain parts of the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions may be provided to Customer over the Internet, and other parts of the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions may be installed and operated by Customer on its own technology systems and networks.

1.4.4 **Updates; Add-on Features/Modules.** ARCOS will provide Updates as are required to keep the ARCOS Products in conformance with the functional requirements set forth in an applicable Work Order. Unless otherwise agreed in a Work Order, ARCOS will, in its sole discretion, determine the nature, content, timing, and release of any Updates. Any order for an Add-on Feature/Module made by Customer and accepted by ARCOS will be subject to a separate Work Order under terms mutually agreed upon by the Parties.

1.4.5 **Support Services.** ARCOS will provide Support Services under the terms of a Service Level Agreement if set forth in the applicable Work Order.

1.5 **Changes or Additions to the Services.** Except as otherwise provided in Sections 1.4.3 and 1.6, the Services mutually agreed to in an applicable Work Order shall not be amended, modified, or otherwise changed, unless mutually agreed to by both Parties in writing. Customer may order additional Services or modify existing Services by contacting ARCOS. ARCOS will send Customer a Work Order, based on ARCOS's formal requirements analysis and/or proposal for the additional Services and the payment(s) due for each ordered item. Customer may either (i) accept the terms by signing that Work Order and returning it to ARCOS, or (ii) negotiate and mutually agree upon the terms of a Work Order. All executed Work Orders will become part of this Agreement.

1.6 **Products and Features End of Life.** ARCOS will generally provide 60 days to six months lead-time notification for discontinued products and features at the end of life (EOL): (i) the 60 day lead time can be expected for technology based features and functions when ARCOS determines there is a sufficiently similar product replacement available; (ii) up to six months lead time can be expected for products where ARCOS determines Customer may need a longer period of time to test and implement an alternate solution; (iii) if marketplace or industry drivers force technology or functional changes, ARCOS will notify the Customer within a reasonable timeframe whenever possible as information is available to ARCOS which may be beyond six months.

1.7 **Project Managers.** During the term of this Agreement when Services are provided under any Work Order, each of ARCOS and Customer will designate and maintain a project manager (the "ARCOS Project Manager" and "Customer Project Manager," respectively) for each Work Order, to be responsible for the performance of his or her company's obligations under such Work Order and this Agreement. Each Project Manager: (a) will be the primary point of contact for his or her company in dealing with the other company under the Work Order; (b) will be a full-time employee of his or her company; (c) will be reasonably acceptable to the other Party; and (d) will have the authority and power to make decisions with respect to actions to be taken by his or her company under the Work Order.

## 2. **LICENSE.**

2.1 **License.** Subject to and conditioned upon Customer's compliance with its obligations under this Agreement, ARCOS grants to Customer a limited, nontransferable, non-exclusive license for

the term of the applicable Work Order to use the Software and ARCOS Products and as necessary to use or receive the Services included in any executed Work Order for the sole purpose of supporting the operations of Customer's business, all as further described herein and in the applicable Work Order. With respect to the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions portions that are installed and operated by Customer (i.e., not hosted by ARCOS), ARCOS grants to Customer a limited, nontransferable, non-exclusive license to install and host the Software solely for Customer's internal business purposes, which license is limited to the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions functionality listed on the applicable Work Order and is pursuant to the other terms and restrictions set forth in this Agreement, and such license shall last until the end of the term set forth in the applicable Work Order or, if earlier, the termination of this Agreement. The license terms may be restricted on a per user or per meter (or other metric) basis, as set forth in the applicable Work Order. Notwithstanding anything to the contrary, Customer may not (i) resell any Software or Services or (ii) process and/or analyze the data of a third party as a service bureau or for any Affiliate that has not executed a Work Order pursuant to the terms of this Agreement.

2.2 **Ownership of ARCOS Products and Software.** All materials provided by ARCOS to Customer with respect to the Services or ARCOS Products, including but not limited to the Software, proprietary data, proprietary documentation associated with the ARCOS Products or the Software, or other proprietary information developed or provided by ARCOS or its licensor, such as text, graphics (including the underlying web-presentation code of the ARCOS System or the hosted portions of the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions), logos, button icons, images and any non-public know-how, methodologies, equipment, or processes used by ARCOS to provide the ARCOS Products and Services to Customer, including, without limitation, all of ARCOS's copyrights, trademarks, patents, trade secrets, and any other Intellectual Property Rights inherent in and appurtenant to the ARCOS Products or Services shall remain the sole and exclusive property of ARCOS. Except for any preexisting Customer Intellectual Property Rights, Customer Data and Confidential Information provided by Customer under this Agreement, and subject to any third-party rights or restrictions, ARCOS will own all Intellectual Property Rights in or related to all deliverables that are developed or delivered by ARCOS hereunder or pursuant to a Work Order. ARCOS and Customer will execute such other and further instruments reasonably requested by the other Party which are necessary to give effect to the provision of this Section or to perfect an interest allocated herein. Customer shall not: (i) alter or modify any part of the ARCOS Products or Software, (ii) copy or duplicate or permit a third party to duplicate any aspect of the ARCOS Products or Software, (iii) decipher, reverse engineer, decompile, disassemble or otherwise reduce or attempt to derive source code, algorithms, tags, specifications, architecture or other elements of the ARCOS Products or Software, or (iv) sublicense, sell, transfer, lease or disclose the ARCOS Products or Software to any third party. The provisions of this Section will survive the expiration or termination of this Agreement and each Work Order.

3. **INTENTIONALLY OMITTED.**

4. **AFFILIATES.** Customer enters into this Agreement for its own benefit and, if an appropriate Work Order is executed, for the benefit of its Affiliates. Any Customer Affiliate may utilize this Agreement by executing and delivering to ARCOS a Work Order, provided that the Customer Affiliate must agree as part of the Work Order, among other things, to comply with and be bound by the terms and conditions of this Agreement to the same extent as if Affiliate were a party to this Agreement, and, unless the context otherwise expressly indicates, all references to Customer herein will be deemed to be references to Customer Affiliate as well. In addition, Customer will remain responsible for compliance by each of its Affiliates with the terms and conditions of this Agreement and the applicable Work Order(s).

5. **FEES.**

5.1 **Payment.** Customer agrees to pay the amount(s) specified in each executed Work Order. Any fee specified in a Work Order will only remain in effect until the date specified in the Work Order.

5.2 **Time of Payment.** Unless otherwise specified in the Work Order, payments not subject to a good faith billing dispute are due and payable to ARCOS within thirty (30) days of the date of Customer's

receipt of the applicable ARCOS invoice. Such invoices will be generated in accordance with the terms set forth below, unless otherwise specified in the applicable Work Order. Customer's failure to provide ARCOS with purchase order information to include on an invoice does not constitute a billing dispute and shall not extend the payment due date. ARCOS reserves the right, in its absolute discretion, to perform a credit check on Customer.

5.3 **Invoice Procedure.** ARCOS standard invoicing procedure is as follows (unique treatment for a particular ARCOS Product, Customer or Affiliate will be addressed in the applicable Work Order):

5.3.1 **Annual SaaS Fees and Per Call Usage Fees.** Invoicing of annual SaaS fees for the ARCOS System and Services will commence and be effective upon the earlier of delivery of the base production ARCOS System (consisting of Callout or Crew Manager) or ten (10) business days from ARCOS receipt of a fully-executed Work Order and payable by Customer annually upon receipt of an invoice from ARCOS during the term of the applicable Work Order. Per call usage fees and any other variable fees are billed monthly in arrears.

5.3.2 **Annual License Fees.** Invoicing of annual license or SaaS fees for the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions, will commence and be effective upon ARCOS delivery to the Customer quality assurance (QA) environment and payable by Customer annually thereafter upon receipt of an invoice from ARCOS during the term of the applicable Work Order.

5.3.3 **Professional Services.** Invoices for billable professional services will be delivered pursuant to the agreed upon method of delivery upon execution of the Work Order(s).

5.4 **Taxes.** Customer shall be responsible for the payment of all applicable taxes associated with this Agreement or its use of the Services (other than taxes based on ARCOS's income or the income of ARCOS employees), including, but not limited to, personal property taxes, import taxes, taxes on telecommunication services, information services, data processing services or similar governmental charges that may be assessed by any jurisdiction, whether based on gross revenue or delivery of products or services. If ARCOS is required to pay any such taxes directly, Customer shall, upon receipt of an ARCOS invoice, reimburse ARCOS for any amount that ARCOS has paid. Notwithstanding the above, Customer shall not be required to pay those taxes from which Customer is legally exempt.

5.5 **Reimbursement of Expenses.** Customer agrees to reimburse ARCOS for actual, customary, and reasonable out-of-pocket expenses for travel, food, and lodging; provided that such expenses are for travel made at Customer's request. Reimbursable expenses shall not exceed those allowed by Customer's standard travel policy as provided by Customer to ARCOS in writing. Customer shall pay all approved expenses owing to ARCOS hereunder within thirty (30) days after ARCOS has submitted to Customer an itemized invoice for such expenses, with substantiating receipts if requested by Customer.

5.6 **Disputed Amounts.** If any portion of an amount due to ARCOS under this Agreement or a Work Order is subject to a good faith dispute between the Parties, Customer will pay to ARCOS on the due date any of the amount due that is not being disputed in good faith by Customer. ARCOS may re-invoice Customer for such aforementioned amounts not in dispute. Within thirty (30) days of Customer's receipt of the invoice on which a disputed amount appears, Customer will notify ARCOS in writing of the specific items in dispute, and will describe in reasonable detail Customer's reason for disputing each such item. Within ten (10) days of ARCOS receiving such notice, the Parties will negotiate in good faith to reach settlement on any items that are the subject of such dispute. Upon resolution of the disputed portion of an invoice, ARCOS shall re-invoice Customer for the amount due, and Customer shall pay to ARCOS the amount due within five (5) days of receiving the ARCOS invoice.

5.7 **Past Due Amounts.** Any past due amounts will bear interest until paid at a rate of interest equal to the lesser of (i) the prime rate established from time to time by Citibank of New York plus two percent, or (ii) the maximum rate of interest allowed by applicable law.

6. **CONFIDENTIAL INFORMATION.**

6.1 **Defined.** By virtue of this Agreement, the Parties may be exposed to or be provided with certain confidential and proprietary information of the other Party or third parties, including but not limited to information designated as confidential in writing or information which ought to be in good faith considered confidential and proprietary to the disclosing Party ("**Confidential Information**"). Confidential Information of ARCOS and/or its licensors includes but is not limited to the terms and conditions (but not the existence) of this Agreement, including without limitation all Work Orders, fees and charges, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, proposals, budgets as well as results of testing and benchmarking of the Software or ARCOS Products, product roadmap, data and other information of ARCOS and its licensors relating to or embodied in the ARCOS Products, Software or Documentation. ARCOS's placement of a copyright notice on any portion of any Software or ARCOS Products will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of ARCOS. Confidential Information of Customer includes Customer Data.

6.2 **Non-Disclosure.** Each Party will protect the other Party's Confidential Information from unauthorized dissemination and use the same degree of care that each such Party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Neither Party will use Confidential Information of the other Party for purposes other than those necessary to directly further the purposes of this Agreement. Neither Party will disclose to third parties Confidential Information of the other Party without prior written consent of such other Party. Notwithstanding the foregoing, ARCOS may share Customer Confidential Information with third party service providers to the extent necessary for such third-party service providers to perform Services under this Agreement. Each such third-party service provider shall be required to protect Customer Confidential Information to the same extent as ARCOS is required under this Agreement.

6.3 **Exceptions.** Information shall not be considered Confidential Information to the extent that the receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving Party; (ii) was in the receiving Party's possession before receipt from the disclosing Party; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has been independently developed by the receiving Party without reference to any Confidential Information of the disclosing Party. For the avoidance of doubt, de-identified and aggregated data that ARCOS derives or creates from Customer Data ("**De-Identified Data**") shall not be deemed to be Customer Data, and instead such De-Identified Data shall be considered Confidential Information belonging to ARCOS.

6.4 **Compelled Disclosure.** The receiving Party may disclose Confidential Information of the disclosing Party if it is compelled by law to do so, provided the receiving Party gives the disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure. Notwithstanding anything to the contrary, the Parties acknowledge this master service agreement and Work Orders are subject to the California Public Records Act (California Government code sections 6250 et seq. (and any successor thereto) (sometimes referred to as the "California Public Records Act"). In compliance with applicable law, the Customer may also disclose Confidential Information in response to a lawful request made by a member of the public under the California Public Records Act. Nothing in this agreement shall be construed as prohibiting Customer from disclosing Confidential Information in the event ARCOS fails to obtain a timely court order prohibiting such disclosure.

6.5 **Remedy/Injunctive Relief.** The Parties acknowledge that disclosure of any Confidential Information may give rise to irreparable injury to the Party whose information is disclosed, which injury may be inadequately compensated in damages. Therefore, either Party may seek injunctive relief against the other Party's breach or threatened breach of this Section 6 as well as any other legal remedies that are available.

6.6 **Public Record.** Notwithstanding anything to the contrary in this Agreement, ARCOS acknowledges that Customer is subject to the provisions of the California Public Records Act. This Agreement and all materials made available under or as a consequence of it including any Work Orders (collectively, for this Section 6.6, called the "Materials"), may be public records as defined in the California Public Records Act. Any specific part of the Materials that is claimed by ARCOS to be Confidential Information or proprietary information must be clearly identified as such by ARCOS as set forth in Section 6.7.

6.7 **ARCOS Identification of Confidential Information.** If ARCOS considers any portion of the Materials to be protected from disclosure under the law, ARCOS must clearly mark on each page and/or individual piece (collectively referred to in this Section as "Record") (as opposed to marking only the first page or a cover page to a Record) on the bottom or top of each Record in a manner which makes the words immediately obvious and identifiable, the following words, all capitalized: "PROPRIETARY AND CONFIDENTIAL". If ARCOS does not do this, it agrees, for itself and any subcontractor, partner, or other person or entity, whose Material is used in connection with or incorporated into the Agreement, that each Record, which is not so marked, may be inspected and copied by the public and further that the Customer may disclose the same to the public for such purposes.

If a request is made for inspection and/or copying of the Materials under the California Public Records Act, the Customer will review such Materials to determine which Records contained therein are marked "PROPRIETARY AND CONFIDENTIAL." The Customer will endeavor to provide reasonable, advance written notice to ARCOS to the effect that Records which are not so marked may, in the Customer's sole reasonable discretion, be disclosed by the Customer to the public for inspection and copying. For each Record appropriately marked as "PROPRIETARY AND CONFIDENTIAL", the Customer will determine whether, in its opinion, the Record is exempt from inspection and/or copying under California law. If in its discretion the Customer determines that the Record is not exempt from disclosure to the public, the Customer will notify ARCOS of the request and the Customer's decision that the Record should be disclosed. The Customer will allow ARCOS 10 days from the date of the receipt of the disclosure request days to file suit and obtain a court order to restrain disclosure by the Customer. If ARCOS fails or neglects to take such action within said time, the Customer will release all Records, which it has deemed it must disclose. So long as the Customer follows the procedures in this Section, ARCOS agrees and warrants that neither it, nor any subcontractor, partner, or other person or entity, providing it with Material for inclusion in the Agreement, will have any claim for loss or damages whatsoever against the Customer arising out of either disclosure or any action taken by the Customer under this Section 6.7.

## **7. CUSTOMER DATA.**

7.1 **Ownership of Customer Data.** Customer shall retain title to and ownership of Customer Data but grants ARCOS (and its service providers) the limited right to access, store, process, and use Customer Data solely for the purpose of complying with the obligations of ARCOS under this Agreement and any applicable Work Order. ARCOS will not disclose, sell, assign, lease or otherwise dispose of or commercially exploit Customer Data in any manner other than as set forth herein without prior written consent of Customer, except to the extent such disclosure or use is required by law, rule, regulation or government or court order. The foregoing restrictions on Customer Data shall not apply to De-Identified Data, which will be used by ARCOS and its other customers for its business purposes. For example, De-Identified Data is used to provide the ARCOS Resource Assist functionality by allowing Customer (and Customer's service providers as well as ARCOS's other customers) to obtain better information and understanding of necessary and available resources during an emergency.

7.2 **Customer Access to Customer Data on ARCOS Products.** ARCOS will make available via the ARCOS System all Customer Data residing thereon for printing or downloading therefrom. Within thirty (30) days following termination or expiration of the applicable Work Order ("Work Order Termination"), all Customer Data on the ARCOS System will be returned to Customer and destroyed by ARCOS. The preceding process is sometimes referred to herein as the Work Order



Termination Protocol. With respect to any Work Order that has not terminated, during the term of this Agreement, including extensions of the original term, if any, ARCOS agrees to retain Customer Data that is on the ARCOS System for at least three (3) years or for such period greater than three (3) years if mutually agreed upon by the Parties in writing pursuant to a Work Order or comparable contract. Such measuring period will begin upon the date ARCOS first had possession of the Customer Data and will end three (3) years thereafter. During the term of this Agreement, subsequent to expiration of the aforementioned Customer Data retention period, ARCOS may destroy such Customer Data without providing notice to the Customer. In the event of Work Order Termination (as such term is defined, above), the Work Order Termination Protocol, above, will be controlling with respect to the terminated Work Order.

7.3 **Security.** In addition to the requirements set forth in any applicable Work Order, ARCOS will establish and maintain commercially reasonable safeguards against the unintended destruction, loss, or alteration of Customer Data in the possession of ARCOS. ARCOS will use reasonable diligent efforts, but no less than used to maintain its own security, to maintain the security of Customer Data in ARCOS's possession and in the ARCOS System and in the hosted portions of the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions and, accordingly, will supply Customer, upon request, with information concerning ARCOS's security procedures. In connection with its safeguarding of such information, ARCOS will provide and maintain backup files of Customer Data files in ARCOS's possession.

## 8. **WARRANTIES.**

8.1 **Customer Warranties.** Customer warrants to ARCOS that (a) before providing personal contact information to ARCOS or its agents, or instructing ARCOS to communicate with such persons via such personal information, Customer will comply with any laws applicable to the disclosure of personal information and shall obtain appropriate consents to so use such personal information, including providing notices to or obtaining permission from third parties to allow sharing of their personal information with ARCOS and to allow ARCOS to communicate with such persons; (b) if Customer requests that ARCOS record any phone calls or other communications while performing the Services, such recording is legal under applicable laws, rules and regulations; (c) Customer has the power and authority to enter into and perform its obligations under this Agreement; and (d) any Customer Data or other data, documents, graphics or other material used with or downloaded to the ARCOS Products by Customer shall not (i) infringe the Intellectual Property Rights of any third party, (ii) violate any applicable law, statute, ordinance, regulation or treaty, (iii) be defamatory, libelous, unlawfully threatening or harassing, (iv) be obscene or indecent, or (v) contain any viruses or other computer programming routines that could damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information of any person or Entity.

8.2 **ARCOS Warranties.** ARCOS warrants to Customer that (a) ARCOS has the power and authority to enter into and perform its obligations under this Agreement and provide the Services; (b) the Services will be performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry, (c) ARCOS has the right to use and license the ARCOS Products and Software, (d) the ARCOS Products and Software do not infringe the Intellectual Property Rights of any third party, and (e) ARCOS will use commercially reasonable efforts to prevent viruses from being introduced into the ARCOS System, the hosted portions of the ARCOS Damage Assessment, Mobile Inspection, and/or sSMART location tracking solutions, or into the Software that is provided to Customer. Both Parties acknowledge and agree that the limits of its remedies for breach of this warranty are set forth in Section 9 of this Agreement.

8.3 **Limitation.** NEITHER ARCOS NOR ANY OF ITS SERVICE PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE FUNCTIONS CONTAINED IN THE ARCOS PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL HAVE THE CAPACITY TO MEET THE DEMAND DURING SPECIFIC HOURS. ARCOS WILL NOT BE LIABLE FOR ANY DAMAGES THAT CUSTOMER MAY SUFFER ARISING OUT OF USE, OR INABILITY TO USE, THE SERVICES OR ARCOS PRODUCTS PROVIDED HEREUNDER. ARCOS WILL NOT BE LIABLE FOR

UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES, CUSTOMER DATA OR OTHER INFORMATION THROUGH CRIMINAL OR FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, UNLESS AND TO THE EXTENT SUCH ACCESS, ALTERATION, THEFT, OR DESTRUCTION IS CAUSED AS A RESULT OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY ARCOS.

8.4. **Disclaimer.** EXCEPT AS SET FORTH IN SECTION 8.2 ABOVE, ARCOS MAKES NO OTHER WARRANTIES, AND ARCOS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND ACCURACY. WITHOUT LIMITATION, ARCOS MAKES NO WARRANTY, AND HEREBY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO THE NETWORK TRANSMISSION CAPACITY OF TELECOMMUNICATIONS CARRIERS, DROPPED OR GARBLED CALLS OR OTHER FAILURES OF TELECOMMUNICATIONS DEVICES, OR DELAYS IN DELIVERY OR SENDING OF CUSTOMER DATA AND INFORMATION.

ARCOS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER'S USE OF ANY ARCOS PRODUCTS WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION HIPAA OR THE GRAMM-LEACH-BLILEY ACT OF 1999. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE ARCOS PRODUCTS OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

CUSTOMER ACKNOWLEDGES THAT ACCESS TO OR USE OF THE ARCOS PRODUCTS MAY NOT BE UNINTERRUPTED OR ERROR FREE. THE REMEDIES SET FORTH IN SECTIONS 9 AND 11 BELOW WILL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO A BREACH BY ARCOS OF WARRANTY UNDER THIS AGREEMENT.

9. **LIMITATION OF LIABILITY.** EXCEPT FOR CLAIMS OF PERSONAL INJURY OR PROPERTY DAMAGE, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR (A) INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, WHETHER CLAIMED UNDER CONTRACT, TORT, FAILURE OF WARRANTY OR ANY OTHER LEGAL THEORY OR (B) LOSS OF OR DAMAGE TO CUSTOMER'S HARDWARE OR SOFTWARE COMPUTER SYSTEMS, DATA, OR PROGRAMMING. EXCEPT FOR ARCOS'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 11 AND FOR EXCEPT FOR CLAIMS OF PERSONAL INJURY OR PROPERTY DAMAGE, ARCOS'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT WILL BE AN AMOUNT EQUAL TO THE FEES PAID TO ARCOS BY CUSTOMER HEREUNDER FOR THE MOST RECENT TWELVE (12) MONTH PERIOD OF THIS AGREEMENT UP TO THE DATE SUCH LIABILITY AROSE.

10. **TIME TO BRING CLAIM.** NEITHER CUSTOMER NOR ARCOS SHALL BRING ANY CLAIM AGAINST THE OTHER PARTY ARISING OUT OF THIS AGREEMENT, A WORK ORDER OR OTHERWISE BETWEEN THE PARTIES, REGARDLESS OF THE FORM OF SUCH CLAIM, GREATER THAN THREE (3) YEARS AFTER THE CAUSE OF ACTION ACCRUED OR WAS DISCOVERED.

11. **INDEMNIFICATION AND INSURANCE.**

11.1 **Intellectual Property Indemnification by ARCOS.** ARCOS will indemnify, defend, and hold Customer harmless against any claim by a third party that the ARCOS Products or Software delivered by ARCOS infringes the Intellectual Property Rights of a third party, and ARCOS shall pay costs, damages, settlements, and reasonable attorneys' fees that result from such claims. In addition to defending Customer as stated above, if such a claim occurs, or in the opinion of ARCOS is likely to occur,

ARCOS will, at its sole option and expense: (i) procure Customer's right to continue using the ARCOS Products or Software; (ii) replace or modify the infringing element(s) of the ARCOS Products or Software so that it becomes non-infringing; or if it is commercially impractical to accomplish (i) or (ii) above, then (iii) ARCOS shall terminate the applicable license and shall refund to Customer any prepaid and unused fees for the use of the applicable ARCOS Products or Software.

11.2 **Exclusions.** ARCOS shall have no obligation under Section 11.1 to the extent any infringement claim is based on (i) the combination, operation or use of the ARCOS Products or Software with hardware, data or software not supplied by ARCOS if the claim would have been avoided by use of other hardware, data or software; (ii) modifications to the ARCOS Products or Software if the modifications were not made or approved by ARCOS; or (iii) any Customer Data or other information uploaded to the ARCOS Products or Software.

11.3 **Indemnification by Customer.** Customer will indemnify, defend and hold ARCOS harmless against any claim by a third party (including a Customer employee) that arises from: (i) Customer Data or other information uploaded to the ARCOS Products by Customer; (ii) any dispute with a Customer contractor or other end user of the ARCOS Resource Assist functionality; (iii) Customer's use of the ARCOS Products or Software in violation of this Agreement; or (iv) any breach by Customer of its warranties set forth in Section 8.1; and Customer shall pay costs, damages, settlements and reasonable attorneys' fees that result from such claims, except if such claim is caused by the negligence or willful misconduct of ARCOS.

11.4 **Conditions.** The indemnification obligations set forth above in Sections 11.1 and 11.3 are contingent upon compliance with the following conditions by the Party seeking indemnification: (a) providing prompt written notice of the claim to the indemnifying Party; (b) providing all information and evidence within its control which is necessary for the indemnifying Party to conduct a defense, and (c) providing the indemnifying Party with sole control of the defense and all related settlement negotiations. However, the Party seeking indemnification may participate in the defense or settlement of the claim at its own expense.

11.5 **Limitation of Remedy.** This Section 11 states the entire obligations of the Parties regarding indemnity or infringement of Intellectual Property Rights.

11.6 **ARCOS Insurance.** ARCOS maintains the following insurance coverages with carriers rated no less than A (Excellent) by A.M. Best:

**General Liability**

- \$2,000,000 per occurrence
- \$4,000,000 general aggregate
- \$4,000,000 products / completed operations aggregate
- \$2,000,000 personal injury liability
- \$2,000,000 advertising injury

**Automobile Liability**

- \$2,000,000 per occurrence (any auto, owned, hired or non-owned)

**Employers' Liability**

- \$1,000,000 Bodily Injury by Accident - Each Accident
- \$1,000,000 Bodily Injury by Disease - Per Person
- \$1,000,000 Bodily Injury by Disease - Policy Limit

**Umbrella Liability**

- \$3,000,000 per occurrence
- \$3,000,000 general aggregate
- \$3,000,000 products / completed operations aggregate
- \$3,000,000 personal & advertising injury liability

**Professional Liability** ("Technology E&O / Cyber Liability")

\$5,000,000 per claim

\$5,000,000 aggregate

**Workers' Compensation**

Coverage as required by statute

ARCOS shall comply with Customer insurance requirements as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

12. **TERM AND TERMINATION.**

12.1 **Term.** The term of this Agreement will begin on the Effective Date; and, unless earlier terminated as provided in this Agreement, will continue for as long as any Work Order continues to be in force. Upon the end of any initial term in a Work Order, such Work Order and accordingly this Agreement may be extended upon mutual agreement of the Parties.

12.2 **Termination for Cause.** If either Party materially defaults in the performance of any of its duties or obligations under this Agreement or any Work Order (except for a default in payments to ARCOS which will be governed by Section 12.3), which default is not substantially cured within thirty (30) days after written notice is given to the defaulting Party specifying such default or, with respect to those defaults that cannot reasonably be cured within thirty (30) days, should the defaulting Party fail to proceed within thirty (30) days to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, the Party not in default may, by giving written notice thereof to the defaulting Party, terminate either (a) the Work Order(s) under which the uncured default has occurred or (b) this Agreement and all outstanding Work Orders (including the one(s) under which the uncured default has occurred), in either case as of the date of receipt by the defaulting Party of such notice or as of a future date specified in such notice of termination.

12.3 **Suspension or Termination for Nonpayment.** If Customer defaults in the payment when due of any amount due to ARCOS pursuant to this Agreement or any Work Order (which amount is not subject to a bona fide billing dispute), and does not cure such default within thirty (30) days after being given written notice of such default, ARCOS may, by giving written notice thereof to Customer: (a) suspend its performance under this Agreement and/or Work Order(s); (b) require full payment before any additional performance is rendered by ARCOS; (c) terminate the Work Order(s) under which the uncured default has occurred; and/or (d) terminate this Agreement and all outstanding Work Orders (including the one(s) under which the uncured default has occurred), in either case as of the date of receipt by Customer of such notice or as of a future date specified in such notice of suspension or termination.

12.4 **Effect of Termination.** Termination of this Agreement will not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor will termination relieve Customer of its obligation to pay all charges that accrued prior to termination. Upon receipt of payment for all outstanding charges, ARCOS shall return to Customer or destroy all Customer Data and copies of any Confidential Information provided by Customer under this Agreement or belonging or relating to Customer then in the possession of ARCOS.

12.5 **Transition.** In connection with the expiration or termination of a Work Order or this Agreement, ARCOS and Customer shall cooperate in good faith in order to provide for the orderly transition to Customer of the Services and any other related services as then being performed by ARCOS for Customer. Without limiting the foregoing:

12.5.1 **Transition Phase.** In the event of any termination of a Work Order or this Agreement which occurs due to expiration or non-renewal of its term or due to termination for ACROS's breach, and provided all undisputed charges are fully paid, Customer may request and ARCOS will provide a transition period of up to ninety (90) days following the termination date during which time Services will continue to be provided pursuant to the terms of this Agreement and any applicable Work

Order at the rates set forth in the applicable Work Order. All such transition services must be prepaid by Customer.

12.5.2 **Transition Plan**. If Customer provides a written request to ARCOS no later than thirty (30) days before the expiration or termination of the applicable Work Order or this Agreement, ARCOS will develop and submit to Customer a proposed plan for transition services, setting forth the tasks to be completed by both Parties, and a good faith best estimate of the time and cost required to complete such tasks (the "**Transition Plan**"). The Parties shall have a period of ten (10) days to negotiate and agree on a final Transition Plan starting on the date ARCOS submits to Customer the proposed Transition Plan. If the Parties are unable to agree, then ARCOS shall provide only such services as are set forth in Section 12.5.1.

12.5.3 **Transition Fees**. The charge for preparation of the Transition Plan and any ARCOS services under such plan or under Section 12.5.1 shall not exceed the then-current ARCOS time and materials rates for performance of the services, plus expenses if incurred. ARCOS will provide Customer with one copy of all Customer Data in optical media format. ARCOS shall provide the Customer Data within thirty (30) days after a written request by Customer, but in any event prior to the expiration of the transition period.

12.5.4 **Final Payment**. Within seven (7) days after any expiration or termination of this Agreement or an individual Work Order, ARCOS shall submit to Customer an itemized invoice for any fees accrued or expenses incurred in connection with Services performed prior to such expiration or termination under this Agreement or an individual Work Order. If Customer wishes to receive any transition services, Customer must pay for all such accrued fees and expenses, in addition to prepaying ARCOS a good-faith estimate of all transition services fees.

12.6 **Renewal**. Any extension or renewal of this Agreement or of an applicable Work Order shall be by written agreement of the Parties.

If Parties fail to renew a Work Order prior to its expiration, and Customer wishes to extend the services provided in such Work Order during a renewal negotiation, ARCOS shall have the right to grant or deny such extension in its sole discretion. During any such extension, the rates set forth in the Work Order, or within any related amendments, shall automatically increase by twenty-five percent (25%) until such renewal is fully executed by the Parties. Customer will not receive a credit or a refund for the additional twenty-five percent (25%) increase, and ARCOS shall retain such fees, even if a renewal with lower fees is later executed by the Parties. The effective date of such renewed Work Order will be retroactive to the applicable Work Order's original expiration date, which may not be the date that Parties execute such renewal. If, after the extension period ends, Customer fails to renew the Work Order, such Work Order will be viewed as having been terminated as of the end of such extension period.

13. **RIGHT TO ENGAGE IN OTHER ACTIVITIES**. Nothing in this Agreement shall prevent or restrict ARCOS from providing information technology services for third parties, including the usage of De-Identified Data; provided, however, ARCOS shall abide by the restrictions regarding protection of Customer's Confidential Information set forth in Section 6.

14. **EXPORT REGULATIONS**. Customer shall comply fully with all relevant export laws and regulations of the United States to ensure that the ARCOS Products and Software are not exported, directly or indirectly, in violation of United States law.

15. **INDEPENDENT CONTRACTORS**. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

16. **MARKETING PROGRAM.** [Intentionally Omitted.]

17. **MISCELLANEOUS.**

17.1 **Governing Law and Jurisdiction.** This Agreement and any Work Order shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to conflict of laws principles. The Parties agree that any suit or proceeding arising out of or relating to this Agreement will be brought in the federal and/or state courts, as applicable, in the State of Ohio, in the event ARCOS is the defendant in such suit or proceeding, and in the State of California, in the event Customer is the defendant in such suit or proceeding, and each Party irrevocably submits to the jurisdiction and venue of such courts. The Parties agree that this contract is not a contract for the sale of goods; therefore, this Agreement shall not be governed by any codification of Articles 2 or 2A of the Uniform Commercial Code, or any references to the United Nations Convention on Contracts for the International Sale of Goods.

17.2 **No Waiver.** The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

17.3 **Amendment.** No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by the Parties.

17.4 **Force Majeure.** Neither Party will be deemed to be in default hereunder, or will be liable to the other, for failure to perform any of its non-monetary obligations under this Agreement or any Work Order for any period to the extent that such failure results from any event or circumstance beyond that Party's reasonable control, which were not the result of the negligence or lack of due diligence of the affected Party, including acts or omissions of the other Party or third parties, natural disasters, riots, war, civil disorder, court orders, acts or regulations of governmental bodies or labor disputes, and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts. Telecommunications failures, such as dropped calls, garbled voices, or sounds, and missed or misread touch tones, shall be considered force majeure issues outside the control of either Party.

17.5 **Notices.** All notices required or permitted under this Agreement shall be in writing addressed to the respective Parties as set forth below, unless another address shall have been designated, and shall be deemed to be given on the date when delivered by hand, by certified mail, or by national overnight delivery service, with written verification of receipt. A Party may change its contact address upon ten (10) days written notice to the other Party.

**IF TO CUSTOMER:**

City of Riverside, a California charter city and municipal corporation  
Attn: Legal Department  
3025 Madison Street  
Riverside, California 92504

**IF TO ARCOS, then to:**

ARCOS LLC  
Bruce A. Duff, CEO  
445 Hutchinson Ave., Suite 600  
Columbus, OH 43235

17.6 **Assignability.** Neither Party may assign its rights and obligations under this Agreement or any Work Order without the prior written permission of the other Party. Notwithstanding the above, either Party may assign this Agreement (along with all Work Orders) in conjunction with a merger,

consolidation, or sale of all or substantially all its assets. This Agreement shall be binding on each Party's successors and permitted assigns.

17.7 **Binding Agreement.** This Agreement and each Work Order will be binding upon Customer and ARCOS and will inure to the benefit of each Party and each Party's respective successors and authorized assigns (it being understood and agreed that nothing contained in this Agreement or any Work Order is intended to confer upon any party other than ARCOS and Customer any rights, benefits or remedies of any kind or character whatsoever under or by reason of this Agreement or any Work Order).

17.8 **Duplicate Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

17.9 **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person, Entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each remaining term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17.10 **Non-Solicitation.** Unless otherwise mutually agreed to by the Parties in writing, each Party agrees it will not attempt to hire or solicit the employment of any of the other Party's personnel during the term of this Agreement and for a period of one (1) years thereafter.

17.11 **Entire Agreement.** This Agreement and the exhibits, appendices and Work Orders set forth the entire understanding between the Parties concerning the subject matter of this Agreement and supersede all contemporaneous and prior negotiations, understandings, and agreements with respect to the subject matter of this Agreement. No representation or warranty has been made by or on behalf of any Party to this Agreement (or any officer, director, employee, or agent thereof) to induce any other Party to enter into this Agreement or to abide or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth in this Agreement. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer or any Affiliate in connection to this Agreement be deemed to modify, alter, or expand the rights, duties, or obligations of the Parties under, or otherwise modify, this Agreement, regardless of any failure of ARCOS to object to such terms, provisions, or conditions. The expiration or termination of this Agreement or any Work Order for any reason will not release either Party from any liabilities or obligations set forth herein or therein which (a) the Parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

**EXECUTION.** EXECUTION AND DELIVERY OF THIS AGREEMENT SHALL BE LEGALLY VALID AND EFFECTIVE THROUGH: (I) HAND-DELIVERY; (II) FACSIMILE TRANSMISSION, ELECTRONIC MAIL IN PORTABLE DOCUMENT FORMAT (".PDF") OR OTHER ELECTRONICALLY SCANNED FORMAT; OR (III) USE OF AN ELECTRONIC DOCUMENT EXECUTION AND DELIVERY PROCESS, E.G., DOCUSIGN®, ADOBE DOCUMENT CLOUD.

**AUTHORIZED REPRESENTATIVES.** ARCOS and Customer each affirm that it has signed this Agreement through its authorized representative.

Exhibit "A" is attached hereto and is incorporated by reference herein.

(Signatures appear on immediately following page)





## EXHIBIT A

### Insurance

1. **General Provisions.** Prior to the Customer's execution of this Agreement, ARCOS shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the Customer's Risk Manager or Customer Attorney, or a designee, unless such modification is prohibited by law.

1.1 **Limitations.** These minimum amounts of coverage shall not constitute any limitation or cap on ARCOS's indemnification obligations under Section 11 hereof.

1.2 **Ratings.** Any insurance policy or coverage provided by ARCOS or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

1.3 **Cancellation.** The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to Customer by certified or registered mail, postage prepaid.

1.4 **Adequacy.** The Customer, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by ARCOS pursuant to this Agreement are adequate to protect ARCOS. If ARCOS believes that any required insurance coverage is inadequate, ARCOS will obtain such additional insurance coverage as ARCOS deems adequate, at ARCOS's sole expense.

2. **Workers' Compensation Insurance.** By executing this Agreement, ARCOS certifies that ARCOS is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. ARCOS shall carry the insurance or provide for self-insurance required by California law to protect said ARCOS from claims under the Workers' Compensation Act. Prior to Customer's execution of this Agreement, ARCOS shall file with Customer either 1) a certificate of insurance showing that such insurance is in effect, or that ARCOS is self-insured for such coverage, or 2) a certified statement that ARCOS has no employees, and acknowledging that if ARCOS does employ any person, the necessary certificate of insurance will immediately be filed with Customer. Any certificate filed with Customer shall provide that Customer will be given ten (10) days' prior written notice before modification or cancellation thereof.

3. **Commercial General Liability and Automobile Insurance.** Prior to Customer's execution of this Agreement, ARCOS shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure ARCOS against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of ARCOS. The Customer, and its officers, employees and agents, shall be named as additional insureds under the ARCOS's insurance policies.

3.1 ARCOS's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

3.2 ARCOS's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of ARCOS's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with ARCOS's performance of this Agreement, which vehicles shall include, but are not limited to, ARCOS owned vehicles, ARCOS leased vehicles, ARCOS's employee vehicles, non-ARCOS owned vehicles and hired vehicles.

3.3 Prior to Customer's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the Customer evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with Customer and shall include the Customer and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the Customer and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by ARCOS will be considered primary and not contributory to any other insurance available to the Customer and Endorsement No. CG 20010413 shall be provided to the Customer.

4. **Errors and Omissions Insurance.** Prior to Customer's execution of this Agreement, ARCOS shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the Customer from claims resulting from the ARCOS's activities.

5. **Subcontractors' Insurance.** ARCOS shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon Customer's request, ARCOS shall provide Customer with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.

[End of Agreement]