



## APPENDIX D

### Services Agreement

This **SERVICES AGREEMENT** ("Agreement") is made as of \_\_\_\_\_, 201\_\_\_\_ ("Effective Date"), by and between \_\_\_\_\_ ("Customer") and Austin Ribbon & Computer Supplies, Inc., 9211 Waterford Centre Blvd, Ste. 202, Austin, TX 78758 ("ARC").

#### 1. Definitions.

For purposes of this Agreement, the following terms shall have the following meanings. Additional terms are defined throughout this Agreement as they first appear.

- a) "Deliverables" means the tangible materials that ARC delivers to the Customer as set forth in a Statement of Work.
- b) "Developed Work" means any and all Technology that is developed or reduced to practice in the process of developing and delivering the Deliverables.
- c) "Manufacturer" refers to the original producer of Products that ARC may deliver and/or may provide Services for, under this Agreement
- d) "Product(s)" means hardware and/or software products manufactured or licensed by a third party. Products may be incorporated in, or delivered with, any of the Deliverables.
- e) "Services" means the work to be performed or the services to be provided pursuant to a Statement of Work.
- f) "ARC Technology" means Technology owned by ARC.
- g) "Site" means Customer's domestic facility, including contiguous buildings within a radius of one half (1/2) mile of Customer's domestic facility, where Products are located and/or Services are to be performed.
- h) "Statement of Work or SOW" is a document which describes the work to be performed for the Customer along with the schedule, pricing and other information related to the performance of such work.
- i) "Support" means the maintenance and support of Deliverables and/or Products.
- j) "Technology" means algorithms, concepts, data, designs, developments, documentation, discoveries, HTML, XML and other codes, inventions, methods, multimedia files, object code, procedures, scripts, programs, source code, text, documentation, web pages and any other item generally recognized as technology in ARC's or the Customer's industry.
- k) "Appendix A" means the Appendix A - Standard Terms and Conditions for Product and Related Services Contracts (Version 05/02/14), to Texas Department of Information Resources' (DIR) Contract No. DIR-TSO-2530, and all amendments thereto.

#### 2. Overview.

This Agreement, in accordance with DIR Contract No. DIR-TSO-2530 and Appendices A, B, and C and Exhibits 1 and 2 to DIR Contract No. DIR-TSO-2530, states the Terms and Conditions by which ARC will deliver, and Customer will receive, certain Services provided by ARC. The specific Services to be provided by ARC pursuant to this Agreement shall be identified in a SOW. Each SOW shall specify the Services to be provided, the Site where the Services are to be provided, the schedule for performing the Services, any other specifics related to the Deliverables such as training and/or documentation, the fees to be paid by the Customer for the Services, and any other applicable terms, conditions or assumptions required for the timely and complete performance of the Services, such as the availability of necessary hardware, software and/or facilities.

### 3. Termination.

Termination of this Agreement shall be handled in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2530.

### 4. Payments.

Purchase Orders, Invoices, and Payments will be handled in accordance to Appendix A, Section 8 of DIR Contract No. DIR-TSO-2530. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.

### 5. Warranty.

ARC warrants that it will perform Services hereunder in good faith and with a level of professional competence usual in the industry. ARC will provide Defect Maintenance (as defined below) for Deliverables for 90 days from the date of final acceptance of the Deliverables at no additional cost to Customer. Thereafter, ARC will provide Support for the Deliverables for an additional fee and subject to the terms and conditions of either an addendum to this Agreement or a separate Support Services Agreement. Notwithstanding the foregoing, any Support (whether during the initial 90 day period or thereafter) that is necessitated by any change, modification, editing or repairs made on the Deliverables by Customer or any third party, shall be at an additional cost to Customer. For purposes of any SOW, "Defect Maintenance" shall mean maintenance of the Deliverables to enable them to work properly in the original environment for which the Deliverable was designed. Any Products delivered to Customer by ARC under a SOW is without warranty of any kind from ARC. **ARC DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND OR NATURE WITH RESPECT TO ANY PRODUCTS. CUSTOMER'S ONLY WARRANTIES FOR ANY PRODUCTS ARE THE APPLICABLE MANUFACTURER'S WARRANTIES, IF ANY.**

### 6. Acceptance of Deliverables.

ARC shall deliver each Deliverable at the time and in the manner specified under this Section and the SOW. Each Deliverable comprised of or containing Developed Work will be subject to acceptance testing by Customer to verify that the Deliverable satisfies the criteria for acceptance mutually agreed to by Customer and ARC in the SOW. At such time as ARC first offers the applicable Deliverable to Customer for acceptance, ARC shall provide written notice of completion to Customer (the "Completion Acknowledgement"). Upon receipt of the Completion Acknowledgement, Customer shall have seven (7) business days to complete such acceptance testing as Customer desires to determine the functionality, performance and conformance of the Deliverable to the specifications contained in the Statement of Work. Within seven (7) business days after receipt of the Completion Acknowledgement, Customer may give ARC a written letter specifying any deficiencies in the Deliverable (the "**Deficiencies**"). Such letter shall specify the particular criteria or requirement(s) detailed in the SOW, with which the Deliverable does not comply. In the event of any alleged Deficiencies, ARC shall proceed in a commercially reasonable manner to correct at its own expense such Deficiencies, if they so exist. After the Deficiencies have been corrected by ARC and subsequent notice is given to Customer, Customer may again run such acceptance tests as it desires and thereupon deliver to ARC a list of any additional or non-corrected Deficiencies within seven (7) business days of such subsequent notice and at Customer's discretion, Customer may terminate all or part of the Purchase Order for the Deliverables. In the event Customer elects to terminate the Purchase Order or a portion thereof, ARC shall reimburse Customer all payments made by Customer for the deficient Deliverable, including but not limited to the cost to return the Deliverable to ARC. If Customer (a) begins use of the Deliverable in a production environment before acceptance, or (b) fails to notify ARC of its acceptance or non-acceptance within seven (7) business days of receipt of the Completion Acknowledgement, Customer shall be deemed to have accepted the Deliverable and shall have no further recourse under this Section.

### 7. Change Control.

Subject to Appendix A, Section 4 of DIR Contract No. DIR-TSO-2530, the Terms and Conditions of an executed SOW may only be modified or amended upon mutual written agreement of ARC and the Customer. If Customer wishes to make any changes to an executed SOW, Customer shall provide ARC with a written document specifying the desired changes in the requirements (the "Change Request"). Customer acknowledges that any changes to a SOW may require increased work by ARC, necessitating a reasonable adjustment in the fees due ARC. Customer agrees to negotiate such increases in good faith and to accept any delays in the Services or Deliverables caused by such negotiations. Acceptance of the proposed Change Request shall be at ARC's sole discretion. If ARC accepts the proposed Change Request and Customer accepts any

associated adjustments in schedule and fees payable, the parties shall execute the proposed Change Request, which shall detail the change in the Deliverables or Services and other related adjustments. After both parties execute the Change Request the terms of the Change Request shall prevail over the SOW to which the change applies, to the extent they are inconsistent. If ARC does not accept the proposed Change Request and/or Customer does not accept the related adjustments to the schedule and/or fees, the proposed Change Request shall be null and void and the applicable SOW shall continue to govern without change. If the Customer requests changes while work is in process under a SOW and the changes do not warrant the effort of the use of the change control process described in this Section 7, ARC will, upon Customer's written approval, charge for the work on a time and materials basis at ARC's previously agreed to hourly rate.

**8. No Solicitation.**

During the period beginning on the effective date of this Agreement and for a period of one (1) year after the date of the Completion Acknowledgement of the most recent SOW neither Customer nor ARC shall, without the express written consent of the other party, individually or on behalf of any other person, firm, corporation or other entity, directly or indirectly, solicit or encourage any employee of the other party, or any subsidiary of the other party, to terminate his or her employment with that party.

**9. Confidential Information.**

Confidential Information shall be handled in accordance with Section 8 of DIR Contract No. DIR-TSO-2530 and Appendix A, Sections 5 and 10 of DIR Contract No. DIR-TSO-2530.

**10. Independent Contractor.**

The parties to this Agreement are deemed to be Independent Contractors and matters regarding this determination shall be handled in accordance with DIR Contract No. DIR-TSO-2530, Appendix A, Section 10, A.

**11. Ownership and Licensing of Intellectual Property.**

Intellectual Property Matters shall be handled in accordance with Section 8 of DIR Contract No. DIR-TSO-2530.

**12. Insurance.**

Insurance matters shall be handled in accordance with DIR Contract No. DIR-TSO-2530, Appendix A, Section 10.

*This Agreement, any addendum(s) to this Agreement and each Statement of Work must be signed by authorized representatives of Customer and ARC prior to the commencement of Services under any Statement of Work.*

*IN WITNESS WHEREOF, the parties have read all portions of this Agreement and agree to be bound thereby.*

AUSTIN RIBBON & COMPUTER (ARC)

CUSTOMER

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_