

**CONTRACT NAME: AGREEMENT BETWEEN ARC
DOCUMENT SOLUTIONS, LLC AND DAVIS JOINT UNIFIED
SCHOOL DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: This agreement is between ARC Document Solutions, LLC and Davis Joint Unified School District to provide information management cloud-based software and services to store large plans and documents.

FISCAL IMPACT: This agreement is for 2017-2018. The cost for this service is \$1,100, allocated in the Routine Restricted Account.

MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”) is entered into as of this 25th day August, 2017 (the “Effective Date”), by and between ARC Document Solutions, LLC, a Texas limited liability company (“ARC”), with its principal place of business at 1981 North Broadway, Suite 385, Walnut Creek, CA 94596, and Davis Joint Unified School District (“Client”). ARC and Client are individually hereinafter referred to as a “Party” and collectively as the “Parties”.

WHEREAS, Client desires to have ARC provide information management cloud-based software and/or services (collectively “Services”) and ARC has agreed to provide the Services to Client;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, and intending to be legally bound, the Parties hereto hereby agree as follows:

1. DEFINITIONS

“**Client Data**” means all data and information, including, without limitation, any graphics or images that are created, installed, uploaded or transferred in connection with the Services by Client or Client’s Users.

“**Documentation**” means the technical documentation provided with the Services as updated from time to time.

“**Internal Business**” means the use of the Services for Client’s core business, but excluding any use of the Services to provide software services in the nature of a service bureau, commercial hosting, or commercial information technology services to such third parties or to resell or distribute to third parties.

“**Services**” means the services to be performed by ARC as described in Exhibit A or a SOW, including both Software Services and Professional Services. Software Services includes cloud-based software and mobile applications. Professional Services includes ARC services personnel who perform various service functions as described in Exhibit A or a SOW.

“**Statement of Work**” or “**SOW**” means a separate document referencing this Agreement that is signed by both parties and states additional Services to be performed by ARC and the fees for such additional Services.

“**Users**” means employees, consultants, contractors or agents of the Client who are authorized to access and use the Services in connection with the Internal Business of the Client and have been supplied user identifications and passwords by Client (or by ARC at Client’s request). Each User will receive a user ID and password to access the Services. Unless otherwise specified, User subscriptions are granted to individual, named persons and cannot be shared or used by more than one User but may be reassigned from time to time to new Users replacing former Users who have terminated an employment or some other prior relationship with Client, changed job status or function, or otherwise no longer require ongoing use of the Services.

2. LICENSE GRANT AND RESTRICTIONS

2.1 License Grant. Subject to the terms of this Agreement, ARC grants Client and its Users a worldwide, non-exclusive, non-transferable, non-sublicenseable, non-assignable (except in connection with a permitted assignment of this Agreement), revocable right and license to (a) access and use the Services for Client’s own Internal Business operations and not for the benefit of any other person or entity and (b) if the Services include Software, use the Software solely for the purpose of accessing and using the Services. The foregoing licenses may only be exercised by Client’s Users.

2.2 Restrictions. Client shall use the Services and the Software solely for its Internal Business purposes as contemplated by this Agreement and shall not, nor allow a third party to, (a) modify, translate, copy, adapt or otherwise create derivative works or improvements, whether or not patentable, based on the Services or the Software, (b) create Internet “links” to or from the Services, or “frame” or “mirror” any content forming part of the Services, other than on Client’s own intranets or otherwise for its own Internal Business Purposes, (c) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Services or the Software in whole or in part, except as and only to the extent this restriction is prohibited by law, (d) use the Services or the Software to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or

in violation of third party privacy rights, (e) use the Services or the Software to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs, (f) interfere with or disrupt the integrity or performance of the Services or the data contained therein or block or disrupt any use or enjoyment of the Services by any third party, (g) attempt to gain unauthorized access to the Services or its related systems or networks, or (h) remove or obscure any copyright, trademark or other proprietary notices, legends or labels contained in the Services or the Software, including on any reports or data printed from the Services.

3. **SUPPORT, SERVICE LEVELS AND SECURITY**

3.1 **Support.** ARC shall provide support via email at support@skysite.com and via phone at 1-844-759-7483 to Client's Users of the Services. This Support is included in the Services at no additional charge.

3.2 **Service Levels.** ARC will provide the service levels described in Exhibit B for the Services.

4. **RESPONSIBILITIES OF THE PARTIES**

4.1 **ARC Responsibilities.** ARC shall use commercially reasonable efforts to make the Services generally available 99.9% of the time, except for (i) planned downtime (of which ARC shall endeavor to give reasonable advance notice) or (ii) any unavailability caused by circumstances beyond ARC's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within ARC's possession or reasonable control, and network intrusions or denial of service attacks.

4.2 **Client Responsibilities.** Client is responsible for all activities associated with the Services that occur under Client's User accounts. Client shall (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and actual content of all Client Data, (b) obtain any licenses and/or consents necessary for ARC to perform its obligations under this Agreement, (c) be responsible for ensuring the security and confidentiality of all User IDs and passwords, (d) prevent unauthorized access to, or use of, the Services, (e) notify ARC promptly of any unauthorized use of the Services or any breach, or attempted breach, of security of the Services, (f) identify and interpret all applicable local, state, federal, and foreign laws in using the Services and (g) not use the Services in a manner that would violate the laws of any country in which the Services is used by Client.

4.3 **Compliance with Laws.** Client represents and warrants that, during the term of this Agreement, it will comply with all laws applicable to the use of the Services, including any laws applicable to Client's industry.

5. **FEES & PAYMENT**

5.1 **Fees.** Client shall pay all fees as specified in this Agreement or a SOW in U.S. Dollars. Except as otherwise provided herein, fees are non-cancellable and non-refundable.

5.2 **Invoicing & Payment.** Fees for the Services are due upon receipt of invoice and payable in U.S. dollars within thirty (30) days of the invoice date without deduction of any kind. Any late payments will be subject to a service charge equal to 2% per month of the amount due or the maximum amount allowed by law, whichever is less.

5.3 **Taxes.** The amounts payable to ARC are exclusive of any sales, use, excise, value added, import, business, service, goods and services, consumption, withholding or other applicable taxes, tariffs or duties ("Taxes"). Client is solely responsible for payment of all Taxes except for any taxes based solely on ARC's net income.

6. **TERM & TERMINATION**

6.1 **Term.** Unless sooner terminated pursuant to the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of Three (3) years ("Term"). The Agreement shall automatically renew for additional, successive one (1) year periods (each a "Renewal Period") unless otherwise terminated by either party by providing a written notice to the other party at least ninety (90) days prior to the end of the then-current term.

6.2 **Termination.** A party may terminate the Services for cause upon 30 days written notice (10 days in the event of non-payment) to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such notice period. Notwithstanding

anything to the contrary in this Agreement, if ARC terminates Client's access to the Services due to Client's breach of any of this Agreement, ARC is not obligated to issue a refund or credit for any unused portion of the Services. Upon any termination by Client for uncured breach by ARC, ARC shall refund Client any prepaid unused fees after the effective date of termination.

- 6.3 Outstanding Fees.** Termination shall not relieve Client of the obligation to pay any fees accrued or payable to ARC prior to the effective date of termination.
- 6.4 Effect of Termination.** Within thirty (30) days after any expiration or termination of this Agreement, ARC will provide a digital copy of all of Client's data residing in the ARC software as of the final date of service (not including hyperlinking services). In the event that this Agreement is terminated for Client's breach, the full balance of any unpaid fees shall immediately become due and payable, together with any arrears unpaid at the time of default. Client acknowledges and agrees that, upon termination of this Agreement, ARC shall have no obligation to maintain or provide any Client Data and ARC shall, unless legally prohibited, delete all Client Data (and any backups thereof) in its systems or otherwise in its possession or under its control. Client further acknowledges and agrees that ARC is not liable for any loss or damage incurred by Client, its Users or any third party as a result of ARC's deletion of Client Data upon the termination of this Agreement.
- 6.5 Surviving Provisions.** Sections 2.2, 5, 7, 8, 9.2, 10 and 11 shall survive any termination or expiration of this Agreement.

7. PROPRIETARY RIGHTS

- 7.1 Reservation of Rights.** ARC and its suppliers and/or licensors own the Software, the Services and any underlying infrastructure, including, without limitation, (a) ARC logos, ARC's domain names, the product and service names associated with the Services, and other trademarks and service marks, (b) certain audio and visual information, documents, software and other works of authorship, (c) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions, data, images, text, content, APIs, tools and other tangible or intangible technical material or information provided in conjunction with the Services and (d) any and all updates, enhancements, bug fixes, patches or any similar changes that may be made generally commercially available to customers of the Services from time to time. Client acknowledges and agrees that (i) the Services, the Software and the Documentation are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (ii) ARC and its suppliers and/or licensors retain all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Services, the Software, the Documentation, any other deliverables, any and all related and underlying technology and any derivative works or modifications of any of the foregoing, including, without limitation, as may incorporate suggestions from Client as contemplated by Section 7.3 below, (iii) there are no implied licenses under this Agreement and any rights not expressly set forth in this Agreement are hereby expressly reserved by ARC, (iv) the Services and the Software is licensed, not sold and Client acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Software, the Services, the underlying infrastructure and the Documentation and (v) the Services are offered as an on-line, hosted solution, and that Client has no right to obtain a copy of the Services.

7.2 Client Data.

- 7.2.1** As between ARC and Client, Client retains all right, title and interest in and to Client Data. By adding, creating, installing, uploading, or transferring Client Data, Client grants ARC and its subcontractors a non-exclusive, worldwide, royalty-free, paid-up, irrevocable, sub-licensable and transferable right and license to host, cache, copy, and display Client Data in any form, medium, or technology now known or later developed during the Term and any Renewal Period for the purpose of and in conjunction with providing the Services. Client agrees not to send any personally identifiable information to ARC and further agrees that ARC shall have no liability for Client's breach of the foregoing.
- 7.2.2** Client represents and warrants that (i) Client owns or has sufficient legal right to the intellectual property rights in the Client Data, (ii) Client has and will keep in effect during Client's use of the Services, all such licenses, approvals, consents and

permissions necessary to provide the Client Data to ARC at no charge to ARC and (iii) the Client Data, including any use thereof by ARC as described herein, does not violate applicable law or the rights of any third party. Client agrees to indemnify, defend (with counsel reasonably acceptable to ARC) and hold ARC harmless from any reasonable costs and other amounts that ARC may incur from Client's breach of any of the foregoing.

- 7.2.3 Upon Client's written instruction, ARC will destroy all hard copies of the Client Data provided by Client to ARC under this Agreement, and Client shall indemnify and hold harmless ARC from any claim or liability arising from such destruction. If Client fails to provide written instruction for the destruction or return of all hard copies of Client Data within 90 days after the expiration or termination of this Agreement, ARC may either store the Client Data at Client's expense or destroy all hard copies of Client Data without any obligations or liabilities to Client.
 - 7.2.4 Client acknowledges and agrees that ARC is free to compile aggregated statistics that include the Client Data along with data of other ARC customers for internal or statistical use, provided that such use shall not (i) include any information that can identify Client or (ii) breach any of ARC's obligations under Section 8 below.
 - 7.2.5 ARC has the right, but not the obligation, to remove any Client Data that may, in ARC's sole discretion, violate this Agreement or that is otherwise objectionable.
 - 7.2.6 Client acknowledges and agrees that, except as expressly set forth herein, ARC is not responsible in any manner for Client Data, and that Client is solely responsible to retain adequate back-ups of Client Data and assumes all risk related to the transmission of Client Data to the Services. In addition, Client acknowledges that, notwithstanding ARC's security precautions, Client's use of, or connection to, the Internet provides the opportunity for unauthorized third parties to illegally gain access to the Services and Client Data. ARC cannot and does not guaranty the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet, or otherwise, or that any security precautions taken by ARC will be adequate or sufficient.
- 7.3 **Suggestions.** ARC shall have a royalty-free, worldwide, perpetual, irrevocable license to use or incorporate into the Services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or its Users relating to the Services or the Software. Any such suggestions shall not be deemed to constitute Confidential Information or to impose any confidentiality obligations on ARC. ARC shall be free to use, disclose, reproduce, license or otherwise distribute and exploit any suggestions provided by Client as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

8. CONFIDENTIALITY

- 8.1 Both parties acknowledge that in the course of performance hereunder, they may have access to confidential or proprietary information of the other party ("Confidential Information"). Both parties agree to use the Confidential Information only as necessary to fulfill their respective obligations under this Agreement and agree to hold such Confidential Information in confidence, except such disclosure as may be required by law. Each party agrees that it will treat all Confidential Information with at least the same degree of care as it accords to its own Confidential Information.
- 8.2 Client agrees that all Confidential Information used, or created, by ARC to provide the Services shall be and remain the property of ARC, including without limitation proprietary software, accounting and tracking systems, pricing, forms, reports, and other like material used to provide the Services.

9. LIMITED WARRANTY & DISCLAIMER

- 9.1 **Limited Warranty.** ARC represents and warrants that the Services shall be provided in a professional and workmanlike manner and materially in accordance with the Documentation. With respect to scanning or file renaming services provided hereunder, this limited warranty shall survive for a period of ninety (90) days from delivery to Client of the subject product; following the expiration of the aforesaid time period, ARC shall permanently delete all process images and related data used in production of the subject product and, unless otherwise agreed in writing, shall permanently delete all backup copies of the subject product.

Warranty claims made with respect to scanning or file renaming services must be accompanied by the original of the hard copy from which the subject product was produced and, in the event that Client has destroyed or requested destruction of the original source hard copy from which the product was produced, this limited warranty will expire on the earlier of the date of destruction of the original source document or the end of the aforesaid ninety (90) day period. This limited warranty does not cover issues or failure resulting from abuse, misuse, alteration, acts of nature or disaster, unauthorized repair or installation, or use of the Services or the Software on or in connection with any hardware or software not specified in the Documentation. ARC's sole liability (and Client's sole and exclusive remedy) for any breach of this warranty will be, in ARC's sole discretion and at no charge to Client (a) to use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity or, if ARC determines such remedies to be impracticable, (b) to allow Client to terminate and receive as its sole remedy any prepaid fees for the remainder of the Term or the then current Renewal Period after the effective date of termination.

- 9.2 DISCLAIMER.** THE ABOVE WARRANTY IS CLIENT'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE AND NON-INFRINGEMENT. EXCEPT AS EXPRESSLY PROVIDED ABOVE, CLIENT ACKNOWLEDGES THAT THE SERVICES AND THE SOFTWARE ARE PROVIDED "AS IS" AND FURTHER ACKNOWLEDGES THAT ARC DOES NOT WARRANT THAT (A) THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, SECURE, ERROR FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (B) THE SERVICES ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE OR (C) THE FEATURES OR FUNCTIONALITIES OF THE SERVICES WILL BE AVAILABLE AT ANY TIME IN THE FUTURE. CLIENT SHALL BE RESPONSIBLE AND ARC SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT CLIENT'S PROPOSED USE OF THE SERVICE COMPLIES WITH APPLICABLE LAWS IN CLIENT'S JURISDICTION(S). CLIENT AND ITS USERS USE OF THE SERVICES IS AT ITS OWN RISK AND CLIENT ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM ITS USE OR INABILITY TO USE THE SERVICES.

10. LIMITATION OF LIABILITY

- 10.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR ANY DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SERVICE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, ARC'S MAXIMUM LIABILITY SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO ARC PURSUANT TO THIS AGREEMENT IN THE PRECEDING SIX (6) MONTH PERIOD. NOTWITHSTANDING THE FOREGOING, THIS SECTION 10 SHALL NOT APPLY WITH RESPECT TO (A) DAMAGES FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY (B) CLIENT'S BREACH OF SECTION 2.2, (C) THIRD PARTY CLAIMS BASED ON

EITHER PARTY'S BREACH OF SECTION 4.3, (D) CLIENT'S BREACH OF SECTION 7.2(b) OR (E) A PARTY'S BREACH OF SECTION 8.

- 10.2 **Limitation of Action.** Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued and upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

11. **GENERAL PROVISIONS**

- 11.1 **Relationship of the Parties.** Client and ARC are and at all times shall be and remain independent contractors as to each other. At no time shall either party be deemed to be the agent or employee of the other party, and no joint venture, partnership, agency or other similar relationship shall be created or implied by virtue of this Agreement.
- 11.2 **Piggybacking.** Client and ARC agree that other public agencies, including without limitation those defined by United States (Local, State and Federal) Government Codes, shall have the option to piggyback upon the terms of this Agreement for their own use for the services defined in this Agreement or any other software applications or services provided by ARC. ARC shall establish pricing based on the agencies' requirements which may differ from those noted in this agreement. Client shall incur no financial responsibility or liability in connection with the piggybacking upon this Agreement by another public agency. ARC agrees that any public agency piggybacking upon the terms of this Agreement shall be solely responsible for its own arrangement with pricing and payments to ARC and that the Client shall have no responsibility or liability whatsoever regarding the piggybacking arrangement.
- 11.3 **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 11.4 **Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.
- 11.5 **No Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 11.6 **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be illegal, unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable, but shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 11.7 **Publicity.** If ARC creates any audio, video or printed marketing material (collectively the "Materials") in connection with the Services, Client agrees that ARC may use and display, the Materials solely for marketing and promotional purposes without liability for infringement of copyright or other proprietary rights. Client grants to ARC and its agents a limited, worldwide, non-exclusive, fully paid-up and royalty-free, perpetual, and irrevocable license to use, reproduce, publicly perform, and display the Materials. Client-certifies as follows:
- 11.7.1 Client represents and warrants it is the lawful owner of all right, title, and interest in and to the Materials and has the requisite power and authority to grant the rights licensed herein.
- 11.7.2 Client agrees to defend, indemnify and hold ARC and its officers, directors, employees, shareholders, affiliates, agents and representatives harmless against any and all liability, loss, damage, claim or expense (including reasonable attorneys' fees and costs) that any and all of the foregoing entities or persons may suffer or incur arising out of Client's breach of any of the representations and warranties provided by Client in this Section of the Agreement.
- 11.8 **Subcontractors and Assignment.** ARC may subcontract the provision of the Services, or any part thereof, including technical support, to subcontractors selected by ARC. Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without ARC's prior written consent, which shall not be unreasonably withheld. For purposes of the preceding sentence, and without

limiting its generality, any merger, consolidation or reorganization involving Client (regardless of whether Client is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which ARC's prior written consent is required. No delegation or other transfer will relieve Client of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this provision is void. ARC may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Client's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

- 11.9 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of California. Any legal claim, suit, action or proceeding arising out of this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the City and County of San Francisco, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens.
- 11.10 Attorneys' Fees and Costs; Waiver of Jury.** The prevailing party in any action to enforce or interpret this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action. To the maximum extent permissible, the parties hereby waive their rights to a trial by jury and acknowledge that such waiver is part of the consideration supporting this Agreement, without which, the parties would not have entered into this Agreement.
- 11.11 Notices.** Notices to be given or submitted by either party to other pursuant to this Agreement shall be in writing and directed to the address in the preamble to this Agreement or otherwise provided to the other party in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), or (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested) or by certified or registered mail, return receipt requested, postage prepaid.
- 11.12 Complete Agreement.** This Agreement, including all exhibits and addenda hereto, constitutes the sole and entire agreement between the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, proposals or representations and warranties, written or oral, concerning its subject matter. In the event of any conflict between the provisions of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Client purchase order or in any other Client order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 11.13 Construction.** The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- 11.14 Force Majeure.** Neither party is responsible for failure to fulfill any non-monetary obligations due to events or causes beyond its control.
- 11.15 Authority.** The individuals executing this Agreement on behalf of each party individually represent and warrant that he or she has been authorized to do so and has the power to bind the party for whom he or she is signing.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates specified below.

ARC Document Solutions, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Bruce E. Colby
Chief Business Officer
August 25, 2017

EXHIBIT A

Services

ARC shall provide the following services and such services as may be set forth in any applicable SOW:

ARC Technology Solutions for Facilities

As defined in the applicable SOW, ARC provides:

1. Capturing and/or Scanning

- a. Client will provide access to the source paper and/or digital documents for transfer to ARC's Service Center.
- b. For small format documents, unless otherwise stated, the defaults for this type of work will be as follows:
 - i. Scan as single-page or multi-page PDF as needed;
 - ii. Scan black and white;
 - iii. Two-sided: Scan as two consecutive images; and
 - iv. Scan at 200 DPI resolution. Optical Character Recognition ("OCR") is available upon request.
- c. For large format documents, unless otherwise stated, the defaults for this type of work will be as follows:
 - i. Large format: Scan as one image at 200 DPI resolution;
- d. Services to be performed on materials received from Client that fall outside the scope of the material outlined in the SOW will be identified. Client will be notified so that ARC may receive additional instruction and provide Client with pricing (if appropriate) for the handling of those extraordinary services and materials outside the scope of Services contemplated under this Agreement.
- e. ARC expects the documents to be of good quality which will not require additional preparation prior to scanning. Should the quality of the documents require document preparation, ARC will provide pricing and timelines for the Service for these types of documents.
- f. Document Retention. Prior to the back file conversion and scanning process beginning, the Client will provide ARC's Project Manager with the Client's post scanning document handling instructions to destroy or return the paper documents. Neither a paper document storage option nor a document destruction option is contemplated or included in Services provided under this Agreement. Should the Client delay providing the approval for document shredding beyond the time ARC needs the documents for file conversion and scanning, the Client will incur and be responsible for payment of document storage fees.

2. File Renaming and Indexing

- a. All small format documents will include OCR and two (2) index fields.
- b. All large format documents will include one (1) index field, Sheet Number, per the document's title block. This data field will be populated by extracting the information from the scanned image. If the information is not available on the document's title block, the field will state "Not Indicated".

3. Organizing, Relating and HyperLinking the Information

- a. ARC's services team will organize the information so that related information is quickly accessible to the Client.
- b. Unless stated otherwise on the SOW, ARC will provide hyperlinks and organization as follows: Standard Organization includes: Campus Dashboard (i.e. multiple buildings); Company/Facility Name, Photograph, Logo and Address; and Facility Dashboards for each building with the following: As-Builts, Floor Plans & Overlays, O&M Manuals, Warranties, Emergency/Life Safety, Shutoffs and Emergency Contacts.

4. Software, Mobile Applications and Cloud Access

- a. The organized information will be made accessible to the Client through ARC's Software and Mobile Applications, called SKYSITE Facilities (and also sometimes referred to as SKYSITE InfoLink).
- b. SKYSITE is a Cloud-Based Software-As-A-Service solution that has ongoing development and release of new functionality. Generally, new functionality is included within the Services at no extra charge. From time to time, ARC may release significant new products or functionality that constitute a different and separable product. In this case, and only if ARC charges other clients

separately for this new product, then such new product functionality would not be included in the Services described herein.

- c. ARC will provide the cloud hosting and access Services via Amazon Web Services.
- d. ARC will maintain Services as set forth in the Service Levels attached as Exhibit B.
- e. The number of end-user licenses to SKYSITE Facilities shall be noted on the applicable SOW.

ARC Technology Solutions for Projects

As defined in the applicable SOW, ARC provides:

1. Organizing, Relating and HyperLinking the Information

- a. ARC's services team will organize the Project information so that related information is quickly accessible to the Client.
- b. Unless stated otherwise on the SOW, ARC will provide hyperlinks and organization as follows: "Standard Organization" includes: Project Dashboard, Current Plans, Specifications, Revisions, RFI's, Submittals, Warranties, O&M Manuals, FFE, As-Builts, Discrepancy Audit Report.

2. Construction Information Management Services. ARC shall provide the following services unless stated otherwise on the applicable SOW:

- a. Current Sets - Organizing & strictly maintaining current sets with revision controls and historical archiving in SKYSITE-Projects.
- b. Dashboards & Document Linking - Project Dashboards and linking the current sets to indexes, callouts and text references to old sets in SKYSITE-Projects.
- c. Compare & Overlay Services - Compare bulletin 1 w/ bulletin 2 with multi-color visual overlay
- d. Discrepancy Audit Reports - We analyze and track all information, and notify client with any and every missing document. This aids project efficiency and speeds close-out timing.
- e. RFI Management - Each form is opened, organized and related back to the appropriate current sets. A "cloud" image is added to the sheet for easy reference.
- f. Monthly reporting allocating all ARC-TS costs to individual projects
- g. Only for the "Large Project Solution" or "Enterprise Solution", ARC shall
 - i. also provide Submittal Management - Review spec sections for submittal items and close-out packages through SKYSITE-Projects.
 - ii. optionally provide, if stated on the SOW, Outsourced Construction Administration & Document Control Services
- h. Rapid Close-Out Services: 1 week target close-out (requires SKYSITE usage, after receiving all information from client) including As-Builts, O&M Manuals, Warranties, Subcontractor List, Facility Contracts, Test Reports, Permits & Equipment Schedule.
 - i. Digital close-out package
 - j. Includes a 90-day free license to ARC Technology Solutions for Facilities which includes all close-out documentation with cloud-based access.

3. Software, Mobile Construction Application and Cloud Access

- a. The organized information will be made accessible to the Client through ARC's Software and Mobile Applications, called SKYSITE Projects (and also sometimes referred to as SKYSITE ProjectLink).
- b. SKYSITE is a Cloud-Based Software-As-A-Service solution that has ongoing development and release of new functionality. Generally, new functionality is included within the Services at no extra charge. From time to time, ARC may release significant new products or functionality that constitute a different and separable product. In this case, and only if ARC charges other clients separately for this new product, then such new product functionality would not be included in the Services described herein.
- c. ARC will provide the cloud hosting and access Services via

Amazon Web Services.

- d. ARC will maintain Services as set forth in the Service Levels attached as Exhibit B.
 - e. The number of end-user licenses to SKYSITE Facilities shall be noted on the applicable SOW.
4. **SmartScreen Interactive Display**
- a. If stated on the applicable SOW, ARC shall provide a 55" SmartScreen Interactive Display to the jobsite.

ARC Technology Solutions for Archives

As defined in the applicable SOW, ARC provides:

- 1. All Services described above under ARC Technology Solutions for Facilities except for Section 3.

Additional Services

- 1. Project Management. Each Party shall designate and assign a project manager (each a "Project Manager" and collectively referred to herein as "Project Managers"). The Project Managers' responsibilities will include, but not limited to, coordinating and communicating project requirements and providing feedback and information as appropriate to their respective parties in a timely manner. Delays in communications may impact the project schedule. The Client's Project Manager will also be responsible for the validation testing and sign off. ARC will schedule a mutually agreeable timeline for a bi-weekly progress meeting to keep all stakeholders updated on the progress and to discuss open items. The Client's Project Manager must be available for these meetings.
- 2. Data Migration if applicable
 - a. Client will provide ARC with the standard folder structure to be implemented in SKYSITE Facilities for publishing the scanned content.
 - b. Client will provide guidance and direction on the document collection.
 - c. ARC will migrate all the scanned images and associated metadata into SKYSITE Facilities based on the folder structure mutually

agreed to by the Client and ARC. Should the folder structure creation require additional labor, indexing or management, ARC will provide a revised scope of work and pricing.

- d. ARC will provide Client with unlimited data storage.
4. Training. ARC will train Client staff on the use of the Software and Mobile Applications. Generally, ARC provides a "Train the Trainer" approach, whereby ARC shall train 2-5 admins or super-users who will then train and support the Client's end users.
5. Customer Success Services: ARC will provide a Customer Success Representative to work with Client Administrations during the term of this SOW to address any questions, identify any additional needs and inform Clients of new functionality being released.
6. Support Services: 24X7 customer support is available at support@skysite.com or 844-SKYSITE (844-759-7483).
7. If applicable, ARC will provide tablet devices for use by Client. Such devices will be subject to the terms and conditions specified in the applicable SOW.
8. In the event ARC buys out Client's existing contract with a physical document storage provider, as noted on the applicable SOW, then ARC will pay the upfront costs of buying out Client's existing contract with its current physical document storage provider ("Physical Document Storage Provider"). Client will provide ARC with supporting documentation (i.e., vendor invoices and proof of payment) of the amount necessary to buy out Client's existing Physical Storage Provider Contract ("Permanent Withdrawal Fees"). Within thirty (30) days of receipt of such documentation, but not before Effective Date, ARC will pay to Client the Permanent Withdrawal Fees. Client agrees to repay ARC the Permanent Withdrawal Fees with the payment terms noted on the applicable SOW.

EXHIBIT B

Service Levels

The following service levels for the Services shall be provided to Client. These service levels cover both the availability of the Services as described in Section 1 and the response times as described in Section 2.

1. **Availability of the Service.** The Services will be available 99.9% of the time. Availability will be calculated per calendar month as follows:

$$\frac{\text{Total} - \text{Non-excluded} - \text{Excluded}}{\text{Total} - \text{Excluded}} \times 100 \geq (99.9\% \text{ availability})$$

- “Available” or “availability” means that requests for documents are completed and documents are returned regardless of latency. Availability of the Services requires correct configuration of policies by Client. For the avoidance of doubt, the unavailability of a specific document or the unavailability of some specific features or functions within the Services, while others remain available, does not mean that the Services are unavailable.
- “Total” means the number of minutes for the calendar month.
- “Non-excluded” means unplanned downtime.
- “Excluded” means
 - Planned downtime, which shall be any period for which ARC gives 8 hours or more notice that the Services will be unavailable.
 - Any unavailability caused by circumstances beyond ARC’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within ARC’s possession or reasonable control, and network intrusions or denial of service attacks.

For any partial calendar month during which Client subscribes to the Services, availability will be calculated based on the entire calendar month, not just the portion for which Client subscribed.

2. **Severity Definitions; Response and Escalation Times.**

Severity Definitions

Severity Level	Severity Description
Severity 1 (Critical)	<ul style="list-style-type: none">• Service outage; Services are “Down”; no workaround.• Materially impaired functionality.
Severity 2 (High)	<ul style="list-style-type: none">• Operational aspects of the Services are severely degraded.• Continuous or frequent instabilities.• Inability to deploy a feature, function or capability.• Successful workaround in place for a severity 1 issue.
Severity 3 (Medium)	<ul style="list-style-type: none">• Performance of the Services is impaired with limited impact.• A functional, stress or performance failure with a workaround.• Successful workaround in place for a severity 2 issue.
Severity 4 (Low)	<ul style="list-style-type: none">• Operational issues for certain features/capabilities with no impact and no loss of functionality.• General “how-to” questions.• Documentation/process issues.

Response & Escalation Times

ARC will respond to Client in accordance with the response time noted in the table below. ARC’s target is to achieve these response times (at minimum) 90% of all requests.

Severity Level	Response Time	Escalation Time	Update Frequency
Severity 1	Immediate	2 hours	Continuous
Severity 2	1 hour	24 hours	Daily
Severity 3	8 business hours	5 business days	Weekly
Severity 4	3 business days	10 business days	Weekly

*Severity 1 and 2 issues must be logged by telephone, or immediately followed up by telephone if logged online, to help ensure the response time target is met.

** ARC will make every reasonable effort to resolve the reported problem, provide a work-around or escalate to the next level within the times listed. ARC makes no commitment to resolve an issue within a specific time.

Response time is the time between initial contact and active engagement by ARC. The response times stated here are targets only. Actual response times may vary.

- Severity 1 requests are responded to on a 24x7 basis.
- Severity 2 requests are responded to on a 24x7 basis, as agreed to between Client and ARC.
- Severity 3 and 4 requests are responded to during normal business hours for the region where the service request was originated.

3. **Escalation by Client.** In the interest of customer satisfaction and efficient case management, a “duty manager” is on call 24x7 as a resource to assist customers who may feel that the severity of their issue has not been accurately characterized, or the response has not been within the stated timelines. To

expedite the resolution or elevate the severity of a reported problem, Client may contact the on-call duty manager. This can be done by calling the 24/7 global on-call duty manager contact line at 1-877-TRY-ARC1 (Worldwide). When contacting the duty manager, Client is required to provide:

- A current, active service request number
- Clear contact information in the event of call-back which includes:
 - Primary contact name
 - Primary contact telephone number
 - E-mail information
 - Alternative contact(s) in the event of unavailability of the primary contact

4. **Certified Administrator.** Only Certified Administrators may contact ARC for technical support. "Certified Administrator" means an employee of Client who attended and passed ARC approved training curriculum for the Services as certified by ARC. Client must have a minimum of two (2) Certified Administrators, not to exceed five (5). ARC shall have no obligations under Section 2 or Section 3 if anyone other than a designated Certified Administrator contacts ARC.

5. **Disclaimers.** No commitment is made under this policy with respect to: (a) the Services being used in conjunction with hardware or software other than as specified in ARC's published documentation, (b) alterations or modifications to the Services, unless altered or modified by ARC (or at the direction of or as approved by ARC), (c) defects in the Services due to accident, hardware malfunction, abuse or use other than in accordance with ARC's published documentation (unless caused by ARC or its agents), (d) an evaluation of the Services or other trial provided to Client at no charge and (e) any problems or issues of connectivity due to the network or internet connection of Client.

In addition, ARC shall not be responsible for any failures or omissions (i) to the extent that they result from any actions or inactions of Client or third parties, (ii) that are caused by factors outside of ARC's reasonable control or (iii) that result from the equipment of Client or a third party.

THIS EXHIBIT B IS NOT A WARRANTY. ALL SERVICES AND MATERIALS RELATED TO THIS EXHIBIT B ARE SUBJECT EXCLUSIVELY TO THE LIMITED WARRANTIES (IF ANY) SET FORTH IN THE SERVICES AGREEMENT AND ARC MAKES NO OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED) REGARDING THE SERVICES AND DISCLAIMS ANY AND ALL LIABILITY FOR ANY FAILURE OF SECURITY, FAILURE OF BACK-UPS, LOST OR CORRUPTED DATA OR INTERRUPTION OF BUSINESS. THE SOLE AND EXCLUSIVE REMEDY OF CLIENT FOR ANY BREACH OF THIS EXHIBIT B BY ARC SHALL BE AS SET FORTH IN SECTION 6.

6. **Remedies.** ARC's sole obligation and Client's sole and exclusive remedy for (a) failure to meet the uptime availability in Section 1, is that ARC will provide an extension of the current Term or Maintenance Period of subscribed Services at no charge to Client in an amount equal to 3 days of additional Services for each 1 hour or part thereof that the Services are not available, subject to a maximum of a full month of extended Services for any one year of subscribed Services and (b) failure to meet the response times in Section 2, is that ARC will re-perform the applicable obligation.

7. **Reporting and Claims.** To file a claim for extension of Services per Section 6, Client must contact support at support@skysite.com with the following details:

- Downtime information detailing the dates and time periods for each instance of downtime during the relevant calendar month.
- An explanation of the claim made under this policy, including any relevant calculations.

Claims may only be made on a calendar month basis and only for the previous calendar month or part thereof. All claims must be made within 10 days of the end of each calendar month.

All claims will be verified against ARC's system records. Should any claim submitted by Client be disputed, ARC will provide to Client a record of the availability of the Services for the period in question. The record provided by ARC shall be definitive. ARC will only provide records of the availability of the Services in response to valid claims by Client at ARC's sole discretion.

EXHIBIT C
SOW Template

Description of Services: Client is purchasing a subscription to and ARC is providing the Services as noted herein and described more fully in Exhibit A. The Services included in this SOW are described below.

Term: The term of this Statement of Work is as stated below and commences on the execution date of this SOW. This SOW shall automatically renew for successive one-year terms unless and until either party terminates by notifying the other in writing at least ninety (90) days prior to the end of any term.

Price Quote

What is being purchased: the Subscription Services for ARC Technology Archives Solution

Including the following volume	Initial	Additional Per year	Total
# Small Format Sheets -->	0	0	0
# Large Format Sheets -->	0	0	0
Total GigaBytes of Digital Data -->			20
SKYSITE Archives Seat Licenses ->			10
SKYSITE Archives Bundle Purchased -->		Basic Archives Bundle	
<u>Client Fees are as follows ("Fees"):</u>		<u>Total Client Fees:</u>	
Initial ARC Services Fee (one-time charge)	\$0	Year 1	\$1,100
Annual ARC Services Fee	\$1,100	Year 2+	\$1,100
Base Term (years)	3	Payments are due	annually in advance

Additional Terms: None

EXHIBIT D
Tablet Terms and Conditions

ARC will provide the equipment specified below ("Equipment").

Tablet Program	Quantity
Tablet Rental	0
Tablet Purchase	0

Any fees associated with network connectivity will be the responsibility of Client.

The following shall apply to the Equipment provided by ARC to Client:

For Tablet Rentals and Tablet Purchases, ARC shall:

1. Provide Apple iPad(s) with comparable or better performance to iPad version 9.7, 10", 128 Gigabyte storage, Wi-fi + Cellular, A9 chip and 2048 x 1536 pixel resolution at 264 ppi.
2. Provide a ruggedized case for the iPad(s).
3. Set-up the iPad(s) with the software apps and system access consistent with the purchases described on the appropriate SOW(s).
4. Ship the iPad(s) and ruggedized case(s) to the Client's location.
5. Provide technical support via (844) 759-7483 or support@skysite.com
6. Repair or replace a maximum of one (1) cracked screen per device per year provided Client pays a \$49 fee per each incident.
7. If Client elects to have ARC service the Equipment (whether Client rents the Equipment from ARC, or owns the Equipment) and pays the fees for such serving, ARC shall manage the assigned Equipment. ARC will be responsible for all costs associated with the installation, management, and operation of such Equipment, other than fees associated with network connectivity.

For Tablet Rentals only, ARC shall:

1. Replace a maximum of 1 non-functional iPad per 2 years provided Client pays a \$99 fee. For Clients with fewer than three (3) iPads, ARC shall replace a maximum of one (1) per 2 years provided Client pays a \$99 fee;
2. Client shall return all Equipment at the end of the term in good working order. If any iPads are returned damaged, then Client shall pay a repair fee not to exceed \$427 per device;
3. At the end of the Term, Client has the option to purchase the rented iPad(s) based on the age of the devices as follows: less than (one) 1 year old, buy-out cost of \$853; between one and two years old, buy-out cost of \$427; or older than two years old, buy-out cost of \$142. In addition to the purchase price, Client shall pay all applicable sales and use taxes for the Equipment.
4. Ownership. During the Term of this Agreement, all rented Equipment shall remain the sole property of ARC. At the end of the Term, if Client elects to purchase the Equipment and pays ARC for the Equipment, ownership of the Equipment shall be transferred to Client.
5. Risk of Loss. Once delivered to Client, risk of loss or damage to the Equipment, or any item, element or component thereof, shall be borne by the Client subject to the provisions of this Exhibit D.
6. Assignment. Client shall have no right to sell, transfer, assign or sublease the rented Equipment.
7. Intended Use. Client represents and warrants to ARC that the Equipment is not intended to be used for personal, family or household purposes. Client indemnifies ARC for any and all damages suffered by any party as a result of content or software downloaded by Client to the Equipment other than ARC's software.

Limitation of Warranties. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ARC DISCLAIMS ALL WARRANTIES WITH REGARD TO THE PRODUCTS SOLD OR LOANED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR PERFORMANCE. ARC'S EMPLOYEES MAY HAVE MADE STATEMENTS ABOUT THESE PRODUCTS. ANY SUCH STATEMENTS DO NOT CONSTITUTE WARRANTIES AND SHALL NOT BE RELIED ON BY CLIENT IN DECIDING WHETHER TO PURCHASE THESE PRODUCTS. ANY STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITY ON THE PART OF ARC FOR LOSS OF PROFITS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS SOLD HEREUNDER, NEGLIGENCE, OR OTHER BREACH OF THIS AGREEMENT. IN NO EVENT SHALL ARC BE LIABLE FOR ANY FAILURE OF PERFORMANCE OR DAMAGE TO THE PRODUCTS HEREBY CONVEYED, OR ANY OTHER PROPERTY OR EQUIPMENT OF CLIENT

RESULTING FROM CLIENT'S CONNECTION, INTER-CONNECTION, INTERFACING, ATTACHMENT OR USE, WHETHER BY ELECTRICAL, MECHANICAL OR OTHER MEANS, OF THE PRODUCTS HEREBY CONVEYED TO OR WITH OTHER ITEMS OF EQUIPMENT, HARDWARE, FIRMWARE OR SOFTWARE NOT SPECIFICALLY APPROVED BY ARC IN THE AGREEMENT OR IN A SUBSEQUENT ADDENDUM HERETO, IN WRITING, SIGNED BY BOTH PARTIES.