

ARRCUS INC.
END USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”). BY DOWNLOADING OR INSTALLING ARRCUS SOFTWARE (DEFINED BELOW), OR BY USING EQUIPMENT THAT CONTAINS THE ARRCUS SOFTWARE, YOU AND ANY ENTITY YOU REPRESENT (“LICENSEE”) AGREE TO BE BOUND BY THIS AGREEMENT WITH ARRCUS INC., A DELAWARE CORPORATION (“ARRCUS”). IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN DO NOT DOWNLOAD, INSTALL OR USE THE ARRCUS SOFTWARE.

This Agreement governs Licensee’s use of the Arrcus Software unless the particular Arrcus Software is subject to a separate written agreement between Arrcus and Licensee that is signed by Arrcus.

1. Definitions

1.1. “Arrcus Software” means the Arrcus software provided by Arrcus for which Arrcus references this Agreement including Arrcus software identified in Arrcus’ order form or quotation that references this Agreement and including any updates Arrcus provides to Licensee to such software for use in connection with it.

1.2. “Authorized Modules” means those modules of the Arrcus Software identified by Arrcus in writing designated as authorized for Licensee’s use and for which Licensee has paid the applicable fees.

1.3. “Documentation” means the then-current printed, online, and/or electronic documentation, if any, that is provided by Arrcus to Licensee describing the use of the Arrcus Software. “Documentation” does not include any sales or marketing materials.

1.4. “Exclusions” is defined in Section 4.3 (Exclusions).

1.5. “Evaluation Software” means any Arrcus Software provided to Licensee for evaluation purposes or otherwise designated by Arrcus as evaluation software.

1.6. “Improvements” means modifications, improvements, derivative works and the like.

1.7. “Intellectual Property Rights” means all intellectual property and proprietary rights throughout the world, including patents, trade secrets, copyrights and trademarks.

1.8. “Software Warranty” is defined in Section 4.1 (Software Warranty).

1.9. “Software Warranty Period” is defined in Section 4.1 (Software Warranty).

1.10. “Third Party Software” is defined in Section 2.6 (Third Party Software).

1.11. “Use Limitations” means the limitations on use of the Arrcus Software provided by Arrcus in writing on its website or in connection with Licensee’s order and/or receipt of the Arrcus Software including in connection with download and/or as provided in connection with the order form provided by Arrcus.

2. License Grant and Intellectual Property Rights

2.1. License. As of the Effective Date, subject to the terms and conditions of this Agreement, including, without limitation, payment and Section 2.32.2 (License Restrictions), Arrcus grants Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable and limited license, only in object code form, to (a) install one (1) copy of the Arrcus Software on

Licensee's own computer system, and (b) use such installed Arrcus Software in accordance with the Documentation and Use Limitations solely for Licensee's internal business purposes.

2.2. Evaluation License. All terms and provisions of this Agreement shall apply to Evaluation Software, subject to the following modifications: (a) the license of Section 2.1 (License) shall be limited to Licensee's evaluation of the Evaluation Software only, (b) Arrcus shall have the right at any time in its sole discretion to terminate this Agreement and any license to Evaluation Software upon written notice to Licensee, and (c) the provision of Section 4 (Limited Warranty) shall not apply with respect to Evaluation Software and all Evaluation Software is provided "as is," without any warranties whatsoever, express or implied.

2.3. License Restrictions. The licenses under 2 (License Grant and Intellectual Property Rights) are conditioned on Licensee's compliance with, and Licensee agrees to, the following: (i) Licensee shall not use the Arrcus Software outside of the scope of the license granted hereunder; (ii) Licensee shall not sublicense, distribute, disclose, market, rent, lease or transfer to any third party of the Arrcus Software or the Documentation, including through any dial-up, remote access, interactive, Internet-based, service bureau or other on-line service; (iii) Licensee shall not remove or cause to be removed from any copies of the Arrcus Software and Documentation, any copyright, licensed trademark, patent or other proprietary notices on the Arrcus Software or Documentation, or any portion thereof; (iv) Licensee shall not modify, alter, adapt, translate, reverse-engineer, decompile, disassemble or attempt to discover the source code, underlying ideas, algorithms, file formats or programming interfaces of the Arrcus Software, Documentation, or any portion thereof in any way, without the prior written consent of Arrcus; (v) Licensee shall not to export or re-export the Arrcus Software, either directly or indirectly, without Arrcus' written consent or in violation of the laws of the United States or other jurisdiction; and (vi) Licensee shall not use any aspects of the Arrcus Software other than the Authorized Modules, and without limiting the foregoing, Licensee shall use the Arrcus Software only in accordance with the respective Documentation, license key and any Usage Limitations and only within the scope for which Licensee is paying the required fees. Licensee agrees that the Arrcus Software may use or contain a license key mechanism limiting its use, and Licensee shall not use or enable the use of the Arrcus Software other than in accordance with the intended limitations of any license key provided by Arrcus (in addition to any contractual limitations). Licensee agrees that, without limitation, any breach of this Section 2.3 (License Restrictions) or unauthorized use of the Arrcus Software or Documentation is a material breach of this Agreement.

2.4. Ownership by Arrcus. Arrcus retains all Intellectual Property Rights covering or embodied in the Arrcus Software and any Improvements to any Arrcus Software. In the event that Licensee acquires any rights in or to any Improvements or Intellectual Property Rights covering or embodying Improvements or the Arrcus Software, Licensee shall assign, and hereby assigns, all right, title and interest in such Improvements and Intellectual Property Rights to Arrcus. In any event, Arrcus shall have the right to integrate and use all Improvements and associated Intellectual Property Rights in Arrcus's products and services without restriction. The non-public aspects of the Arrcus Software including any source code of the Arrcus Software are Arrcus' confidential information. Licensee agrees to maintain the confidentiality of Arrcus' confidential information and not disclose such confidential information to any third party with Arrcus' written consent.

2.5. License Only. The Arrcus Software is licensed, not sold, to Licensee. This Agreement does not transfer any right, title, or interest in or to any such Arrcus Software regardless of any use of the terms "purchase," "acquire," "sale" or similar language herein or in any agreement between Licensee and any third party.

2.6. Third Party Software. The Arrcus Software may use or rely on software that is subject to open source or commercial license terms as identified by Arrcus in writing on its website or connection with Licensee's order and/or receipt of the Arrcus Software ("Third Party Software"). Any Third Party Software Arrcus provides to Licensee is for convenience only, and is not part of the Arrcus Software and is not licensed or subject to Arrcus warranties or other obligations hereunder. Licensee is solely responsible for procuring and complying with any necessary license rights if it chooses to use any Third Party Software.

2.7. No Other Rights. All Intellectual Property Rights of Arrcus not expressly granted to Licensee in this Agreement are expressly reserved by Arrcus. Without limitation, Licensee receives no right or license, by implication, estoppel or otherwise, to any software, technology or Intellectual Property Rights not embodied in the Arrcus Software, even if such other software, technology or Intellectual Property Rights are useful or necessary in connection with the Arrcus Software.

3. Payment

3.1. Payment. Unless otherwise specified by Arrcus, all fees for the Arrcus Software are due and payable in U.S. dollars by bank wire transfer in immediately available funds to a bank account designated by Arrcus. If not otherwise provided in the respective schedule or other documentation from Arrcus, Licensee shall pay amounts due within thirty (30) days of invoice.

3.2. Records and Audit Rights. Licensee shall keep and maintain books and records in sufficient detail to permit the verification of Licensee's obligations hereunder. Arrcus shall have the right to inspect or appoint an auditor to inspect Licensee's systems, books and records relevant to this Agreement and other materials as may be required to verify or determine Licensee's compliance with its obligations hereunder during regular business hours, wherever they are normally kept by Licensee, upon not less than one (1) week's prior written notice. The cost of any such audit shall be paid for by Arrcus unless material non-compliance is found, in which case Licensee shall pay Arrcus for the costs associated with the audit.

3.3. Late Payment. All late payments shall be subject to interest calculated at the rate of one and one-half percent (1.5%) per month or the maximum allowable by law, whichever is less. This Section 3.3 (Late Payment) shall in no way limit any other rights or remedies that may otherwise be available to Arrcus. Licensee agrees to pay all expenses associated with collection, including reasonable attorneys' fees.

3.4. Taxes. All stated prices, fees and other stated charges are exclusive of applicable sales, excise, use or similar taxes. Licensee shall pay all such taxes, either directly or to Arrcus, as required by applicable law or regulation. In the event that Licensee is required to withhold taxes, Licensee shall provide to Arrcus official receipts issued by the appropriate taxing authority or other evidence to establish that such taxes have been paid.

3.5. Payment Terms. Arrcus shall have the right to require advance payment and require adequate assurance of payment in the event that Licensee fails to make payment within the time limits required hereunder, or if, in Arrcus's sole discretion, it is advisable in view of Licensee's financial condition. The foregoing does not limit Arrcus's other remedies hereunder, including the right to terminate this Agreement for breach.

3.6. Effect of Purchase Orders and Other Documents. This Agreement is intended by Arrcus and Licensee to operate as a basic set of operating conditions regarding the license of the Arrcus Software and related services. Purchase orders may be used for convenience to identify the order information, and any other terms of purchase orders are hereby rejected. This Agreement shall prevail over any conflicting or additional terms or conditions of any purchase

order, acknowledgement or other document exchanged in connection with the ordering of the Arrcus Software and related services. Any conflicting or additional terms in any such documents of Licensee are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given.

4. Limited Warranty

4.1. Software Warranty. Arrcus warrants to Licensee that, for a period of ninety (90) days following the delivery of the initial Arrcus Software to Licensee (the “Software Warranty Period”), the Arrcus Software will substantially conform to the Documentation when maintained and operated in accordance with the Documentation (“Software Warranty”). Following the Software Warranty Period, Arrcus may provide maintenance and support, to the extent provided under the terms of a separate maintenance agreement and subject to Licensee’s payment and compliance with the applicable terms of this Agreement and any separate maintenance agreement.

4.2. Remedy. Licensee shall provide Arrcus notice during the Software Warranty Period identifying any non-conformity to Software Warranty and shall provide detail as requested by Arrcus to identify the nature of the non-conformity and conditions under which it appears. Arrcus, at its sole option, shall use commercially reasonable efforts to repair or to deliver a replacement copy of the Arrcus Software. All warranty repairs by Arrcus shall be made at Arrcus’s premises, unless Arrcus otherwise agrees. Licensee’s sole remedy and Arrcus’s sole liability with respect to any warranty regarding the Arrcus Software shall be for Arrcus to use such commercially reasonable efforts to provide the above a correction during the Warranty Period.

4.3. Exclusions. Arrcus provides no warranty for the following or any liability or claim arising from any of the following: (i) software and equipment of Licensee or any third party (including any Third Party Software); (ii) directions, designs, plans or specifications furnished by or on behalf of Licensee; (iii) unauthorized use, or use of the Arrcus Software in violation of this Agreement or other terms with Arrcus, including any copies of the Arrcus Software not made in accordance with the terms of this Agreement and the limitations of the licenses granted hereunder; (iv) any data provided by Licensee or third party; (v) any activities of Licensee or third party through the use of the Arrcus Software; (vi) modification of the Arrcus Software made other than by Arrcus; (vii) the combination, operation or use by Licensee of the Arrcus Software with equipment, devices or software not supplied by Arrcus; (viii) failure of Licensee to use an updated or modified Arrcus Software provided by Arrcus, including those provided to avoid error or infringement; or (ix) Licensee’s use of the Arrcus Software after termination of this Agreement (collectively, “Exclusions”).

4.4. Warranty Disclaimer. THE FOREGOING LIMITED WARRANTIES AND REMEDIES PROVIDED BY ARRCUS ARE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE, ARRCUS DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE ARRCUS SOFTWARE OR ANY SUPPORT RELATED THERETO, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF (i) MERCHANTABILITY, (ii) FITNESS FOR A PARTICULAR PURPOSE, (iii) NON-INFRINGEMENT, (iv) NON-INTERFERENCE, (v) ACCURACY OF DATA, (vi) OPERATION WITHOUT INTERRUPTION OR ERROR, (vii) FREEDOM FROM VULNERABILITY TO INTRUSION OR ATTACK, (viii) INTEROPERABILITY WITH ANY HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY ARRCUS, AND (ix) WARRANTIES ARISING FROM A COURSE OF DEALING, AND ALL SUCH WARRANTIES ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

5. Indemnification. Licensee agrees to indemnify and hold harmless Arrcus at Licensee's expense any action brought against Arrcus to the extent that it is based on a claim arising out of or relating to any of the Exclusions, and Licensee will pay any costs and damages finally awarded against Arrcus in any such actions which are attributable to such claim.

6. Limitation of Liability.

6.1. Limitation of Liability. ARRCUS SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION, RELATING TO THIS AGREEMENT OR IN ANY WAY RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER ARRCUS WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING. IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF ARRCUS FOR ALL CLAIMS HEREUNDER OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED AMOUNTS PAID BY LICENSEE FOR THE RESPECTIVE ARRCUS SOFTWARE GIVING RISE TO THE CLAIM IN THE LAST TWELVE (12) MONTHS UNDER THIS AGREEMENT BEFORE THE EARLIER OF THE MAKING OF THE CLAIM OR TERMINATION OR END OF THE TERM OF THIS AGREEMENT.

6.2. Allocation of Risk. The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of the essential purpose of any limited remedy. Licensee and Arrcus each acknowledge and agree that the limitation of liability provisions of this Agreement reflect an informed, voluntary allocation between them of the risk associated with the exercise of Licensee's rights regarding the Arrcus Software and, but for these provisions, Arrcus would not have made the Arrcus Software available to Licensee under the terms contemplated under this Agreement.

6.3. Applicable Law. The warranty disclaimer and limitations of liability set forth in this Agreement shall not apply to the extent prohibited by law, in which case the disclaimer or limitation shall be modified to disclaim and/or limit in accordance with applicable law. Without limiting the foregoing, to the extent required by law, the foregoing limitations shall not apply to claims due to fraud, bodily injury or death.

7. Term and Termination

7.1. Term. Unless terminated earlier as set forth below, this Agreement shall become effective upon the Effective Date and shall continue for the license term stated by Arrcus in writing on the Arrcus website or in connection with Licensee's order and/or receipt of the Arrcus Software.

7.2. Termination for Cause. Without prejudice to any other right or remedy which may be available to it, each party may terminate this Agreement upon written notice to the other upon the other party's material breach of this Agreement that is incurable or, if curable, remains uncured thirty (30) days after notice to the other party, or, in the case of failure to make payment, remains uncured ten (10) days after notice to the other party. Licensee's failure to pay amounts when due hereunder shall be deemed a material breach.

7.3. Termination for Bankruptcy. If either party (a) becomes insolvent or bankrupt, (b) dissolves or ceases to conduct business in the ordinary course, (c) makes an assignment for the benefit of its creditors, (d) commences any insolvency, receivership, bankruptcy or other similar proceeding for the settlement of its debts or (e) has commenced against it any insolvency, receivership, bankruptcy or other similar proceeding for the settlement of its debts that is not

dismissed within thirty (30) days after notice of such proceeding, then the other party may terminate this Agreement immediately upon written notice to such party.

7.4. Return or Destruction of Arrcus Software. Within fifteen (15) days after termination of this Agreement, Licensee will certify in writing to Arrcus that all copies of the Arrcus Software and Documentation in any form, including partial copies, have been destroyed or returned to Arrcus.

7.5. Effect of Termination. If this Agreement is terminated for any reason, all rights granted hereunder to Licensee shall terminate. The provisions of Sections 1 (Definitions), 2.3 (License Restrictions), 2.4 (Ownership by Arrcus), 3 (Payment), , 4.3 (Exclusions), 4.4 (Warranty Disclaimer), 5 (Indemnification by Licensee), 6 (Limitation of Liability), 7 (Term and Termination) and 8 (Miscellaneous) shall survive termination of this Agreement.

8. Miscellaneous

8.1. Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

8.2. Assignment. Licensee shall not have the right to assign this Agreement, in whole or in part, without Arrcus's prior written consent. Arrcus shall have the right to terminate this Agreement in the event of a change of control of Licensee. Arrcus may freely assign this Agreement without Licensee's consent. Any attempt to assign this Agreement, other than as permitted above, shall be null and void.

8.3. Force Majeure. Nonperformance of any party (other than with respect to payment obligations) shall be excused to the extent that performance is rendered impossible by strike, fire, earthquake, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party.

8.4. Federal Acquisition. This provision applies to all acquisitions of the Arrcus Software by or for the Federal Government, whether by any prime contractor or subcontractor and whether under any procurement contract, grant, cooperative agreement, or other activity by or with the Federal Government. By accepting delivery of the Arrcus Software, the Government agrees the Arrcus Software qualifies as "commercial" computer software within the meaning of the acquisition regulations applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Government's use and disclosure of the software, and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return this the Arrcus Software, unused, to Arrcus.

8.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, U.S.A., applicable to contracts made in and fully performed in the State of California, U.S.A., without reference to conflict of law or choice of law principles that would cause the application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

8.6. Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, a valid provision that most closely matches the intent of the original shall be substituted, and the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect its original intent.

8.7. Waiver. The failure by either party to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.

8.8. Notices. All notices required or permitted under this Agreement shall be in writing and delivered by courier, overnight delivery service, or by certified mail, and in each instance shall be deemed given upon receipt. All notices shall to Arrcus be sent to the addresses set forth below or to such other address as may be specified by Arrcus on its website or otherwise in writing. Arrcus may provide notices to Licensee at the address provided by Licensee in connection with its order or otherwise as changed by Licensee by notice to Arrcus in accordance with this clause.

Notices to Arrcus:

Arrcus, Inc.
2077 Gateway Place
Suite 400
San Jose, CA 95110
USA
Attention: Legal

8.9. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing and signed by duly authorized representatives of the parties.

ACCEPTED AND AGREED:

“Licensee”

Company: _____

Signature: _____

Name: _____

Title: _____

Date: _____

“Arrcus”

ARRCUS INC.

Signature: _____

Name: _____

Title: _____

Date: _____