

# Active Reality, Inc.

## Appendix C to DIR Contract No. DIR-SDD-665 Managed and Advisory Security Services

### Customer Service Agreement

This Active Reality, Inc. (ARI) Managed and Advisory Security Services Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_, by and between the undersigned Active Reality, Inc., (ARI) located at 1115 San Jacinto Blvd Suite 275, Austin, TX 78701 Attention: Director Contract Management (the ARI Contact); and (\_\_\_\_\_) (hereinafter, Customer) located at \_\_\_\_\_, Attention: \_\_\_\_\_ (the "Customer Contact"). ARI and Customer may hereinafter be referred to individually as a Party or collectively as the "Parties." These terms and conditions ("Terms") govern the provision by ARI and the use by the customer ("Customer") of the ARI Managed and/or Advisory Security Services, including any ARI-provided equipment or software located on Customer's premises or at Customer's location(s) for use in connection with such services and including any security related network consulting, design, monitoring, management, maintenance, or other services that may be provided in connection with Customer-supplied networks or IT equipment as part of the ARI Managed and Advisory Security Services (collectively referred to herein as the "Services"). By ordering and using the Services or any portion thereof, Customer agrees as follows:

1. **Purpose.** This Agreement, along with the DIR Contract No. DIR-SDD-665 states the general terms and conditions under which ARI agrees to perform certain Managed and Advisory Security Services for Customer (collectively, "Services"). "Services" are collectively referred to in this Agreement as "Ordered Items or Statements of Work "SOW".
2. **The Services.** Services ordered by Customer shall be described in a statement of work executed by the parties, which shall incorporate by reference the terms and conditions of this Agreement and the DIR Contract No. DIR-SDD-665. ARI will deliver or operate the Services in accordance with its standard policies and procedures and applicable Service Descriptions, incorporated herein by reference, and as described in further detail in a SOW jointly developed by Customer and by ARI. Each SOW shall constitute a separate and individual agreement. In the event of a conflict between the provisions of a particular SOW and the provisions of this Agreement, the provisions of this Agreement shall prevail, unless the SOW expressly amends the terms of this Agreement or the DIR Contract No. DIR-SDD-665 as to that provision. Any changes to an SOW must be in writing and signed by ARI and Customer. Any purchase order issued by Customer shall be deemed a payment device only and any terms and conditions contained therein shall not be a part of this Agreement. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-665, the DIR contract controls.
3. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and continue until termination date listed in the Agreement. Agreement may be terminated pursuant to Section 8.B. of Appendix A contained in DIR Contract No. DIR-SDD-665. After termination of this Agreement, no further SOWs or purchase orders may be placed under this Agreement. However any previously executed SOWs shall continue until terminated or expired in accordance with the SOW; and such SOWs purchase orders shall, through completion, remain subject to the terms of the DIR Contract No. DIR-SDD-665 and this Agreement.
4. **Term and Termination of SOWs.** The term of an SOW shall commence on the effective date specified in the SOW, and shall continue for the period specified therein, unless earlier terminated as provided herein. Either party may, upon written notice, terminate an SOW if the other party (i) fails, after 30 days notice, to make a payment which is delinquent, (ii) fails to conduct business in the normal course, becomes insolvent, or (iii) fails to cure any material breach of any of its other obligations, representations, warranties or covenants hereunder (including those in the applicable SOW) within 30 days after receipt of written notice specifying the basis for the breach.

5. **Rates, Charges and Payment.** Rates and Charges shall be set forth in the applicable SOW/purchase order.
  - (a) Customer shall pay invoices in accordance with Section 5.C. of Appendix A of the DIR Contract No. DIR-SDD-665.
  - (b) Customers purchasing services under this Agreement are tax-exempt and no taxes shall be invoiced pursuant to Section 4.E. of DIR Contract No. DIR-SDD-665.
  
6. **Equipment.** If provision of the Services requires the placement by ARI of Equipment at Customer's location, Customer shall provide (or make arrangements to provide) adequate space and a reasonable installation and operating environment for such Equipment, including electrical power, at no charge to ARI. Customer shall provide access to such Equipment by ARI and its representatives for the purpose of repairing, replacing, maintaining or otherwise using or servicing the Equipment and for removing the Equipment upon termination of the Services. All such Equipment shall remain the property of ARI or its suppliers or subcontractors, and no right, title, or interest in the Equipment shall pass to Customer unless specifically set forth in the SOW. Customer shall not sell, assign, sublet, or otherwise encumber or allow a lien or claim upon or against the Equipment by any action of Customer or any party claiming by, through, or under Customer. Customer shall not move the Equipment from its place of installation or make, or permit any other party to make, any repairs or alterations to any Equipment without ARI's prior written consent. Customer shall be responsible for the cost of repairing or replacing any Equipment lost, stolen or damaged while at Customer's premises (reasonable wear and tear excepted) upon termination of the Services for any reason.
  
7. **Customer's Responsibilities.** (a) As between Customer and ARI, Customer is responsible for (i) assuring that its authorized users comply with the terms of this agreement and that unauthorized persons do not gain access to or use the Services; (ii) providing any equipment and software that may be necessary for the use of the Services by Customer (in addition to any Equipment and Software that may be placed at Customer's location(s) or otherwise provided or used by ARI for its provision of the Services); (iii) timely payment of all charges for usage of the Services; and (iv) performing its other obligations under the terms of this agreement and SOW. Customer shall not use the Services in any way that would be or would assist any third party to be in violation of any law or any Acceptable Use Policy applicable to the Services. Customer shall provide such information and assistance as are reasonably requested by ARI for purposes of facilitating ARI's provision of Services to Customer.
  
8. **Limited Warranty and Disclaimer.**
  - (a) ARI warrants that Services under any SOW will be performed in a good and workmanlike manner.
  - (b) In addition to any warranty provided by the manufacturer, parts and materials, which are furnished by ARI in conjunction with Services under an SOW, will be free from defects in workmanship and material at the time of installation.
  - (c) If any failure to meet the foregoing warranty relative to Services, parts or materials appears within 15 days from the date such Services or material is furnished, ARI shall (i) re-perform the Services and/or repair or replace the defective parts or material without additional charge to Customer, or (ii) refund to Customer the amount paid for such Services or defective parts or material.
  - (d) THE FOREGOING SETS FORTH THE EXCLUSIVE REMEDIES AGAINST ARI FOR CLAIMS BASED ON A DEFECT IN SERVICES OR PARTS OR MATERIALS.
  - (e) EXCEPT AS PROVIDED IN THIS SECTION 6 ARI MAKES NO WARRANTY, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER WITH RESPECT TO ORDERED ITEMS FURNISHED UNDER THIS AGREEMENT OR ANY SOW. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED BY ARI, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST CLAIMS OF PATENT INFRINGEMENT OR THE LIKE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE THE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY.
  
9. **Limitation and Disclaimer of Liability.**
  - (a) ARI shall not be responsible for any use of the Services by Customer, its authorized users, or any third party. Without limiting the generality of the foregoing, ARI shall not be liable to Customer or any of Customer's users for any lost profits or other consequential damages, even if ARI has been advised of the possibility of such damages; any claim or other action against Customer by any third party (except as set forth in the section below on infringement); any act or omission of any other entity furnishing products and services that are used by Customer in connection with the Services or for failure of any products or services

provided by Customer; or any damages or losses caused by the fault or negligence of Customer or Customer's failure to perform Customer's responsibilities.

- (b) NEITHER CUSTOMER NOR ARI OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS SHALL HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES SUFFERED BY THE OTHER OR ANY OTHER PARTY AS A RESULT OF THIS AGREEMENT OR EITHER PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO ALL CONTENT OR OTHER SERVICES AVAILABLE THROUGH THE SERVICE. CUSTOMER AGREES THAT CUSTOMER WILL NOT IN ANY WAY HOLD ARI RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICE.
- (c) In the event that a court or other authorized government entity having demonstrated appropriate jurisdiction should hold that the limitations of liabilities or remedies available as set forth in these Terms, or any portions thereof, are unenforceable for any reason, or that any of Customer's remedies under the terms of this agreement fail of their essential purpose, Customer expressly agrees that under no circumstances shall ARI's total liability to Customer or any party claiming by, through or under Customer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, in the aggregate, exceed the amount of charges paid by Customer for use of the Services during the twelve-month period preceding the date such claim first arose.

10. **Remedies of Customer.** Customer's sole remedy for any failure or non-performance of the Services (including any associated Equipment, Software or other materials supplied in connection with the Services) shall be for ARI to use commercially reasonable efforts to effectuate an adjustment or repair of the Services. In the event such failure or non-performance is not corrected to the satisfaction of the customer the customer's sole remedy is to receive a refund or credit of or against any charges otherwise payable for the Services of any applicable SOW, or (ii) if such failure or non-performance results in Service downtime or degradation so substantial as to render the Service essentially unavailable to or unusable by Customer for normal use, to terminate the Services for default by ARI in the manner provided in the terms of this agreement.

11. **Indemnification.**

Indemnification shall be in accordance with Section 7.A. of Appendix A of the DIR Contract No. DIR-SDD-665.

12. **Force Majeure.** Force Majeure shall be in accordance with Section 8.C. to Appendix A of the DIR Contract No. DIR-SDD-665.

13. **Use of Materials, Marks and Information.**

- (a) Customer may use, copy and distribute the materials found on the Services for internal, noncommercial, informational purposes only. Except as authorized in this paragraph, Customer is not being granted a license under any copyright, trademark, patent or other intellectual property right in the material or the products, services, processes or technology described therein. All such rights are retained by ARI, its applicable affiliates or any third party owner of such rights. Customer shall have no ownership or property rights in the Services or in any documentation provided in connection with the Services. Customer may make copies of such documentation solely for use in connection with its authorized use of the Services, and all such copies shall include all copyright, trademark and other proprietary notices appearing in the original documentation. Upon the termination of the Services to Customer, Customer shall return all copies of the documentation to ARI or certify destruction of such documentation.
- (b) The company names and logos and all related product and service names, design marks and slogans of each Party are the property of the respective Party or its affiliates. Neither Party is authorized to and shall not use any name or mark of the other Party in any advertising, publicity or in any other commercial manner without the prior written consent of the other Party.
- (c) All product and service marks contained on or associated with the Services that are not ARI marks are the trademarks of their respective owners. References to any names, marks, products or services of third parties or hypertext links to third party sites or information do not necessarily constitute or imply ARI's endorsement, sponsorship or recommendation of the third party, information, product or service.

14. **Confidential Information.**

- (a) Confidentiality shall be in accordance with Section 7.G. of Appendix A of the DIR Contract No. DIR-SDD-665. Except as set forth in this Section, or as otherwise expressly provided in this Agreement, and to the extent consistent with Texas law, each Party agrees that (i) all information communicated to it by the other and identified and marked as "confidential," whether before or after the date hereof, (ii) all information identified as confidential to which it has access in connection with the Services and Equipment, and (iii) this Agreement and the Parties' rights and obligations hereunder (collectively, "Confidential Information"), will be, and will be deemed to have been, received in confidence and will be used only for purposes of this Agreement. Each Party agrees to use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and protect the confidentiality of Confidential Information. No Confidential Information will be disclosed by the recipient Party without the prior written consent of the disclosing Party; provided, however, that each Party may disclose this Agreement and any disclosing Party's Confidential Information to those who are employed or engaged by the recipient Party, its agents or those of its affiliates who have a need to have access to such information in connection with their employment or engagement, provided the recipient Party notifies such persons of the obligations set forth in this Section and such persons agree to abide by such obligations.
- (b) The obligations set forth in subsection 14 (a) above will not prevent any Party from disclosing or using information that belongs to such Party or is already known by the recipient Party without an obligation of confidentiality, (ii) is publicly known or becomes publicly known through no unauthorized act of the recipient Party, (iii) is rightfully received from a third party, (iv) is independently developed without use of the disclosing Party's Confidential Information or (v) is disclosed without similar restrictions to a third party by the Party owning the Confidential Information. If Confidential Information is required to be disclosed pursuant to law, regulation, tariff or a requirement of a governmental authority, or in connection with a mediation, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the disclosing Party with timely prior notice of such requirement. To the extent consistent with records retention laws and policies, upon written request at the expiration or termination of an Attachment or Order, all Confidential Information (and all copies thereof) (if previously received by each Party) will be returned to the disclosing Party or will be destroyed, with written certification thereof being given to the disclosing Party. The provisions of this Section will survive the expiration or termination of any Order, Attachment and this Agreement for any reason.
- (c) Confidential Information will not include any feedback, data, answers, questions, comments, suggestions, ideas or the like, that Customer sends to any ARI Company relating to the Services or Equipment, unless Customer identifies it as Confidential Information. ARI assumes no obligation to protect such information from disclosure and will be free to reproduce, use, and distribute the information to others without restriction. ARI will also be free to use any ideas, concepts, know-how or techniques contained in such information or developed by them, for any purpose whatsoever including but not limited to developing, manufacturing and marketing Services and Equipment incorporating such information. Nothing contained in this Section restricts the right and ability of ARI to use information concerning the execution of this Agreement and the provision of the Services and Equipment to Customer in internal publications.

## 15. General.

- (a) Assignments shall be in accordance with Section 3.D. of Appendix A of the DIR Contract No. DIR-SDD-665.
- (b) No action, regardless of form, arising out of the Services or these Terms may be brought by either party more than two years after the cause of action has arisen.
- (c) The DIR Contract No DIR-SDD-665 and this Agreement, together with all Attachments and any SOWs hereunder, constitute the entire agreement between ARI and Customer relating to this Contract and the Services performed hereunder, supersedes any prior written or verbal proposals, agreements, understandings or other discussions respecting the same, and may not be modified or amended other than by a written instrument executed by both Parties. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-665, the DIR Contract controls.
- (d) These Terms and the Services shall be governed by the laws of the State of Texas, without regard to its conflicts of laws provisions. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

- (e) No failure on the part of either Party to exercise any right or remedy arising directly or indirectly under this Agreement will operate as a waiver of any right or remedy it may have, nor will an exercise of any right or remedy by either Party preclude any right or remedy otherwise available to such Party.
- (f) The headings used in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement.
- (g) Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the Parties hereto and not for any other person.

**16. Notices.**

All notices shall be in accordance with Section 9.A. of the DIR Contract No. DIR-SDD-665.

IN WITNESS WHEREOF, ARI and Customer have caused this Agreement to be executed and delivered by their duly authorized representatives, effective upon execution by Customer and acceptance by ARI. The undersigned warrant and represent that they have the authority to bind Customer and ARI to this Agreement.

\_\_\_\_\_  
Signature of (Customer Name )

\_\_\_\_\_  
Signature of Active Reality, Inc.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

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Date

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Date