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Amendment to ARCHIBUS End-User License Agreement (EULA)

This Addendum made and entered into between the County of San Bernardino ("You" or "Your") and ARCHIBUS Inc. ("AI"), effective as of _____ ("Addendum"), is incorporated by reference into and amends the ARCHIBUS Version 23 End-User License Agreement (the "EULA") that is attached to this Addendum and affects the licensing of the ARCHIBUS software.

WITNESSETH:

NOW THEREFORE the parties hereto agree to modify the EULA as follows:

- 1. The third paragraph of the EULA Section entitled "LIMITATION OF LIABILITY AND INDEMNIFICATION" (located on page 6 of the EULA), which reads as follows:**

LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND AI AND ITS SUPPLIERS FROM ANY COST, LOSS, LIABILITY, OR EXPENSE, INCLUDING COURT COSTS AND REASONABLE FEES FOR ATTORNEYS OR OTHER PROFESSIONALS, ARISING OUT OF OR RESULTING FROM ANY CLAIM OR DEMAND BROUGHT AGAINST AI, ITS SUPPLIERS OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, OR AGENTS BY THE LICENSEE OR A THIRD PARTY ARISING FROM OR IN CONJUNCTION WITH ANY PROCUREMENT, INSTALLATION, UTILIZATION, REDEPLOYMENT OR DISPOSAL OF THE PRODUCT

is hereby removed in its entirety from the terms of the EULA and replaced by the following:

IN NO EVENT SHALL AI OR ITS SUPPLIERS BE LIABLE IN ANY WAY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LIABILITY OR INJURY TO THIRD PERSONS, LOSS OF DATA, COST OF COVER, WHETHER FORESEEABLE OR NOT, REGARDLESS OF WHETHER AI OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING AS A RESULT OF LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE. YOU ACKNOWLEDGE THAT THE LICENSE FEE REFLECTS THE ALLOCATION OF RISKS BETWEEN US.

AI SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER ARISING FROM LOSS OR THEFT OF THE PRODUCT OR OF ANY COPY PROTECTION DEVICE/CODE WITH WHICH THE PRODUCT IS SUPPLIED. SPECIFICALLY, AI SHALL NOT BE OBLIGATED TO REPLACE ANY LOST OR

STOLEN PRODUCT OR COPY PROTECTION DEVICE/CODE. YOU ARE SOLELY RESPONSIBLE FOR SAFEGUARDING THE PRODUCT AND ANY COPY PROTECTION DEVICE/CODE FROM LOSS OR THEFT AND PROTECTING YOUR INVESTMENT THROUGH INSURANCE OR OTHERWISE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY WITHIN THIS EULA, LICENSEE AGREES THAT IF THERE IS ANY CLAIM OR DEMAND WITH A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS BROUGHT AGAINST AI, ITS SUPPLIERS, OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, OR AGENTS, BY THE LICENSEE OR A THIRD PARTY ARISING FROM LICENSEE'S INSTALLATION, UTILIZATION, REDEPLOYMENT OR DISPOSAL OF THE PRODUCT IN A MANNER THAT VIOLATES THIS EULA, AI SHALL IMMEDIATELY PROVIDE NOTICE TO THE LICENSEE AND AI WILL HAVE THE OPTION TO IMMEDIATELY SUSPEND THIS LICENSE. IF SUCH CLAIM IS ULTIMATELY PROVEN, EITHER BY THE ADMISSION OF LICENSEE OR THROUGH A DETERMINATION BY A COURT OF COMPETENT JURISDICTION, LICENSEE WILL NOT BE ENTITLED TO THE RETURN OF ANY FEES.

AI will indemnify, defend, and hold harmless Licensee and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Licensee, or Licensee receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Licensee will use reasonable efforts to notify AI promptly of such lawsuit, claim or election. However, Licensee's failure to provide or delay in providing such notice will relieve AI of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. Licensee will give AI sole control of the defense and settlement of such claim; provided that AI may not settle the claim or suit absent the written consent of Licensee unless such settlement (a) includes a release of all claims pending against Licensee, (b) contains no admission of liability or wrongdoing by Licensee, and (c) imposes no obligations upon Licensee other than an obligation to stop using the goods or services that are the subject of the claim. In the event that AI fails to or elects not to defend Licensee against any claim for which Licensee is entitled to indemnity by AI, then AI shall reimburse Licensee for all reasonable attorneys' fees and

expenses within thirty (30) days from date of invoice or debit memo from Licensee. This indemnity shall not apply to any modifications made by the Licensee to the goods at any point without prior written consent by AI.

4. The second and third paragraph of the EULA Section entitled "GENERAL" (located on page 7 of the EULA) shall be replaced in its entirety by the following:

If AI has reasonable grounds to believe that this EULA has been breached, You agree to permit AI or its designated agent to conduct such audit as may be advised by its professional advisors. In the event such audit determines that You have breached this EULA, You understand AI may seek recovery for audit costs, including but not limited to (a) all of AI's expenses and costs associated with such audit and (b) the appropriate license fees plus the applicable administration costs, expenses and other remedies provided under applicable law,

The UN Convention on Contracts for the Sale of Goods shall not govern this EULA; rather this EULA shall be governed and construed by the laws of the Commonwealth of California, including its Uniform Commercial Code without reference to conflict-of-law principles. This EULA is the entire agreement between us and supersedes any other communications or advertising with respect to the Copyrighted Materials.

IN WITNESS WHEREOF, the parties have caused this Amendment to the ARCHIBUS End-User License Agreement to be executed by their duly authorized representatives as of the _____

ARCHIBUS Inc.	County of San Bernardino
BY: _____	BY:  _____
_____ (PRINTED NAME)	<u>Curt Hagman</u> (PRINTED NAME)
_____ (TITLE)	<u>Chairman, Board of Supervisor</u> (TITLE)
_____ (DATE)	<u>JUN 02 2020</u> (DATE)

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

