

NEW YORK CITY FIRE DEPARTMENT

**AGREEMENT ALLOWING USE OF
PORTABLE RADIOS OPERATING
ON FIRE DEPARTMENT RADIO FREQUENCIES
FOR TESTING OF ARC SYSTEMS**

AGREEMENT made as of this ____ day of _____ 20____, between THE CITY OF NEW YORK (“City”), acting by and through its agency, the NEW YORK CITY FIRE DEPARTMENT, with its headquarters at 9 MetroTech Center, Brooklyn, New York, 11201-3857 (“FDNY”), and _____ (“ARC System Company”), a person or company who holds, or

Company Name

is applying for, a FDNY company certificate for the testing of an in-building auxiliary radio communication system (“ARC System”), with principal offices located at

Company Address

WITNESSETH:

WHEREAS, FDNY provides firefighting, emergency rescue, emergency medical service and other services to the people of New York City; and

WHEREAS, the New York City Building Code requires owners of high-rise buildings constructed in New York City on or after December 31, 2014, to install and maintain an ARC System, a wireless two-way communication system designed to transmit wireless Fire Department communications, in such buildings, and to maintain such system, including periodic testing, preventative maintenance and repair, in compliance with the requirements of the New York City Fire Code; and

WHEREAS, the City, acting through the New York City Department of Information, Technology and Telecommunications, holds a Federal Communications Commission (“FCC”) license, and FDNY is authorized to use such license to transmit communications for firefighting and emergency medical service purposes on a radio frequency (“RF”) bandwidth (“FDNY Frequencies”); and

WHEREAS, to ensure that ARC Systems are installed, operated and maintained in compliance with FCC, Building Code and Fire Code requirements, and rules promulgated thereunder (“Code Requirements”), ARC System Company must use portable radios that operate on the FDNY Frequencies; and

WHEREAS, ARC System Company requests that FDNY: (1) authorize ARC System Company to purchase from FDNY’s vendor the specially-designed portable radio used by FDNY; (2) program the portable radios purchased by ARC System Company to operate on the FDNY Frequencies; and (3) authorize ARC System Company to operate on the FDNY Frequencies to test ARC Systems; and

WHEREAS, FDNY is willing to authorize the foregoing in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, the parties hereby covenant and agree as follows:

I. PURCHASE AND USE OF PORTABLE RADIOS

- A. FDNY hereby authorizes ARC System Company to purchase one or more portable radios of the type used by FDNY. FDNY shall specify in writing to its vendor the exact number and specific model of portable radio that ARC System Company is authorized to purchase.
- B. ARC System Company's use of said portable radios shall be in accordance with the terms and conditions of this Agreement, including the requirement that such portable radio(s) be programmed by FDNY.
- C. ARC System Company's use of said portable radios shall be subject to the requirement that the portable radios be submitted to FDNY for inspection on an annual basis to ensure that they are continuing to operate within FDNY parameters and remain suitable for ARC System testing. ARC System Company shall comply with FDNY inspection procedures, including remitting the applicable fee.

II. CONSENT TO OPERATE ON FDNY FREQUENCIES

- A. FDNY hereby authorizes ARC System Company to operate on the FDNY Frequencies solely for purposes of testing ARC Systems for compliance with Code Requirements. ARC System Company is authorized to operate on such FDNY Frequencies only on portable radios approved by FDNY and programmed by FDNY to operate on the FDNY Frequencies for such purposes.
- B. ARC System Company acknowledges the foregoing consent to operate on the FDNY Frequencies is solely for the purposes of testing ARC Systems for purposes of compliance with Code Requirements. ARC System Company further acknowledges that this consent does not authorize ARC System Company to operate on FDNY Frequencies for any other purpose, nor is ARC System Company authorized to use the FDNY Frequencies on a continuous or regular basis.
- C. Notwithstanding any other provision of this Agreement, FDNY reserves the right to terminate this consent at will, in its sole discretion, with or without cause, upon written notice to the ARC System Company.
- D. FDNY's consent is limited to ARC System Company's use of the FDNY Frequencies solely for the purposes set forth in this Agreement. Nothing contained herein shall be construed to authorize the ARC System Company to allow any third party to operate on the FDNY Frequencies at any location or for any purpose, except authorized agents of the ARC System Company in connection with the testing of ARC Systems.
- E. ARC System Company's use of the FDNY Frequencies is subject to FCC requirements. ARC System Company's use of the FDNY Frequencies may not interfere with other lawful transmissions. ARC System Company is responsible for preventing and expeditiously correcting any interference caused by its operation of portable radios on the FDNY Frequencies.
- F. ARC System Company acknowledges that any violation of the terms and conditions of this Agreement could cause irreparable harm and injury and could jeopardize public safety. Accordingly, FDNY shall be entitled, in addition to any other rights and remedies

it may have at law or in equity, to an injunction enjoining and restraining ARC System Company from operating on the FDNY Frequencies in the event of such a violation.

- G. Nothing in this Agreement shall be construed to constitute a warranty or representation by FDNY to ARC System Company that ARC System Company has authority from the FCC or is otherwise in compliance with FCC requirements. ARC System Company shall be solely responsible for ensuring that its operation on FDNY Frequencies is conducted in compliance with all FCC requirements.

III. TERM AND TERMINATION

- A. This Agreement shall take effect on the date first set forth above, and shall terminate on five (5) years from such date, unless sooner terminated by either party, with or without cause, upon written notice to the other party.
- B. ARC System Company shall discontinue operating on the FDNY Frequencies upon any of the following occurrences: (1) the expiration of this Agreement; (2) the effective date of termination of FDNY's consent to operate on FDNY Frequencies; (3) the effective date of termination of this Agreement; (4) the effective date of any suspension or revocation of ARC System Company's company certificate for the testing of in-building auxiliary radio communication systems; or (5) ARC System Company ceases business operations or conducting of ARC System testing. Within two (2) business days of any such date, ARC System Company shall deliver the portable radios to FDNY, in the manner specified by FDNY, for removal of the programming that enables the portable radios to operate on the FDNY Frequencies.

IV. GENERAL PROVISIONS

- A. This Agreement shall be binding upon the parties hereto, their successors, legal representatives and assigns.
- B. This Agreement may not be assigned by the ARC System Company.
- C. ARC System Company shall maintain a copy of this Agreement and shall present same to FDNY or FCC representatives upon request.
- D. The obligations set forth in Sections V, VI and VII hereof shall survive the expiration of this Agreement or its sooner termination by either party.

V. INDEMNIFICATION

- A. Nothing contained herein shall be construed to hold the City of New York, its agencies, officers, employees or agents, including FDNY, responsible for ARC System Company's use of the FDNY Frequencies and use of portable radios programmed by FDNY to operate on FDNY Frequencies, including the failure of said portable radios to operate properly.
- B. ARC System Company shall indemnify and hold the City of New York, its agencies, officers, employees and agents, including FDNY ("Indemnitees"), harmless from any and all liability, claims, causes of action, judgments, damages, penalties and expenses (including reasonable attorneys' fees) for personal injury or property damage arising

from ARC System Company’s use of the FDNY Frequencies and use of portable radios programmed by FDNY to operate on said frequencies.

VI. NOTICES

- A. Except as otherwise specifically provided herein, any notices pursuant to this Agreement shall be delivered; mailed via certified mail, return receipt requested; or faxed and mailed; to the following representatives, or such other representatives that the parties designate in writing:

For FDNY:

Deputy Commissioner for Government Affairs and Special Programs
 New York City Fire Department
 9 MetroTech Center, 8th Floor
 Brooklyn, NY 11201-3857

With a copy to:

General Law Unit
 New York City Fire Department
 9 MetroTech Center, 4th Floor
 Brooklyn, NY 11201-3857

For ARC System Company:

Name: _____
 Title: _____
 Business Address: _____

VII. APPLICABLE LAW AND VENUE

- A. This Agreement shall be deemed to be executed in New York City, regardless of the domicile of ARC System Company, and shall be governed by and construed in accordance with the laws of the State of New York, regardless of the application of conflicts of laws principles.
- B. The parties agree that any and all claims asserted by or against the FDNY arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York located in the City and County of New York.

VIII. NO THIRD PARTY BENEFICIARY

- A. The provisions of this Agreement shall be for the sole benefit of the parties hereto and no other person or entity shall be a third party beneficiary hereof, including, but not limited to, any employee of ARC System Company.

IX. MERGER AND MODIFICATION

- A. This Agreement constitutes the entire agreement between the parties and merges all prior discussions, agreements or understandings into it. No prior agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto.
- B. This Agreement may be modified only by a writing signed by authorized representatives of the parties. This Agreement may not be amended, extended or otherwise modified orally.

IN WITNESS WHEREOF, the undersigned authorized representatives of the parties hereto have caused this Agreement to be executed as of the day and date first above written.

THE CITY OF NEW YORK, acting by and through
THE NEW YORK CITY FIRE DEPARTMENT

By _____
Deputy Commissioner
for Government Affairs and Special Programs

Date: _____

ARC SYSTEM COMPANY (*print name*):

By: _____
Signature of Authorized Representative

(To be signed in the presence of a Notary Public; Notary completes Acknowledgment on the next page; Date below must match Acknowledgment Date)

Print Name: _____

Title: _____

Date: _____

[Acknowledgements Attached]

REVIEWED & APPROVED:

General Law Unit
New York City Fire Department

ARC Portable Radio Agreement (11/16/16)

ACKNOWLEDGEMENT OF CITY OF NEW YORK

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

On this ____ day of _____ 20__, before me personally came _____, to me known and known to me to be the Deputy Commissioner for Government Affairs and Special Programs, the person described in and who executed the foregoing Agreement, and acknowledged to me that he/she executed the foregoing Agreement for and on behalf of the City of New York, for the purposes therein mentioned.

NOTARY PUBLIC

ACKNOWLEDGMENT OF ARC SYSTEM COMPANY

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On this ____ day of _____, 20__, before me personally came _____, to me known and known to me to be the _____, the person described in and who executed the foregoing Agreement for and on behalf of _____, for the purposes therein mentioned and to bind said party thereby.

NOTARY PUBLIC