

RACO Notification Services Agreement

This RACO Notification Services Agreement (the "Agreement"), effective on the Effective Date (as defined in *Exhibit A*, attached hereto and made a part hereof), by and between RACO, a California corporation having its principal place of business at 1400 62nd Street, Emeryville, CA 94608, (hereinafter "RACO") and Subscriber (as defined below). In consideration of the mutual promises contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Notification Services.

1.1 Background. RACO provides Notification Services for the management and monitoring of remote equipment in a variety of businesses, including waste management. The Notification Services utilize devices ("RACO Devices") that are capable of transmitting data or information ("Data Messages") to RACO's website ("Website") by means of third-party carriers of wireless and/or wireline telephone service ("Carriers"). For purposes of this Agreement "Notification Services" is defined as comprising of two functions: (i) off-site monitoring, which is the receiving of Data Messages sent by a RACO Device to the Website, and (ii) the sending of notification messages ("Message Delivery"), as configured by Subscriber, in response to the Data Messages received from the RACO Device.

1.2 Notification Services. Subject to the terms and conditions of this Agreement, RACO shall provide Subscriber with Notification Services during the term of this Agreement at the Service Level set forth in *Exhibit A*. RACO's only responsibility is to provide off-site monitoring and to send notification messages. RACO shall not respond or otherwise take action regarding any event which RACO monitors or for which RACO sends a notification message. Subscriber acknowledges and understands that Notification Services are not intended to be used for a primary life-safety, burglary, or fire protection detection and reporting system. Furthermore, Subscriber acknowledges and understands that Notification Services rely on the telecommunication services of Carriers, which RACO has no control of, and RACO is not responsible or liable for the reliability or availability of Carriers' telecommunications services.

1.3 RACO Devices. Subscriber shall purchase and install on Subscriber's premises the RACO Devices specified in *Exhibit A*. RACO shall be responsible for delivering such Devices to Subscriber; and risk of loss to the RACO Devices shall transfer to Subscriber upon delivery. Subscriber shall take reasonable actions to maintain and protect the RACO Devices. Subscriber shall not modify, alter, disassemble, or damage a RACO Device. If any RACO Device is damaged or otherwise becomes nonfunctional for any reason, Subscriber acknowledges and understands that Notification Services cannot be provided, and that RACO has no liability for failure to provide Notification Services. Subscriber shall be solely responsible for purchasing a new RACO Device from RACO whenever a RACO Device is damaged or otherwise becomes nonfunctional.

2. Fees and Payment. Subscriber shall pay RACO the purchase price ("Purchase Price") for the RACO Devices and the [annual/monthly] fee ("Service Fee") for Notification Services (collectively, the "Fees") in the amount set forth in *Exhibit A*. The Purchase Price is due upon delivery to Subscriber of the RACO Devices. The initial Service Fee is due on the Effective Date; and thereafter each successive Service Fee shall be paid in advance on the first business day of the [year/month]. RACO shall submit an invoice to Subscriber in a timely manner for all Fees. All Fees paid are nonrefundable and must be made in U.S. dollars. The Fees

exclude all applicable sales, use, withholding and other taxes, and Subscriber will be responsible for payment of all taxes (other than taxes based on RACO's income), fees, duties and charges, and any related penalties and interest, arising from the payment of the Fees. Subscriber will make all payments of the Fees to RACO free and clear of, and without reduction for, any taxes, fees or duties. Any such taxes imposed on payments of the Fees to RACO will be Subscriber's sole responsibility; and Subscriber shall defend, indemnify and hold RACO harmless from any such taxes or claims relating to the payment, non-payment or underpayment of such taxes. Any portion of the Fees that is not paid within 30 days of when due shall accrue interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

3. RACO Responsibilities. RACO shall provide Notification Services to Subscriber on a commercially reasonable efforts basis and RACO shall use commercially reasonable efforts to complete each Message Delivery. RACO shall arrange with a third party for the provision of the telecommunication services necessary to provide the Notification Services. RACO agrees to hold confidential all of Subscriber's data in its possession exercising the same degree of care that a reasonable and careful company would exercise with similar data of its own. RACO will implement reasonable security and environmental precautions to ensure a high level of system availability and data protection. RACO will not be responsible for any natural disaster, acts or omissions of Carriers or others that are beyond the control of RACO, which impairs RACO's provision of Notification Services. From time to time, RACO shall make changes and improvements to the Notification Services that may result in short periods of service outage. RACO shall make reasonable efforts to notify Subscriber of such outages at least 24 hours prior to said outages.

4. Subscriber Responsibilities.

4.1 Message Delivery Address Information. Subscriber shall input its Message Delivery address information (i.e. phone numbers, pager numbers, and e-mail addresses) into the Website. Subscriber may, from time to time, change the Message Delivery address information. Subscriber is responsible for the accuracy of all Message Delivery address information.

4.2 Operational Requirements. Subscriber is responsible for: (i) maintaining the RACO Devices and Subscriber's monitored equipment/systems in good working order; (ii) installing and maintaining antenna hardware and equipment sufficient to ensure signal strength of at least four (4) bars on the RACO Devices signal strength indicator; and (iii) operating its RACO Devices, equipment and systems in a manner that does not disrupt or otherwise interfere with RACO's Notification Services system.

4.3 Privacy and Security. Subscriber shall: (i) implement reasonable security and environmental precautions to ensure the RACO's Devices and Subscriber's monitored equipment and systems are not tampered with; and (ii) assume sole responsibility for

the selection and use of any codes or passwords as may be permitted or required for the use of the Notification Services. Subscriber acknowledges that RACO, Aeris Communications, Inc. (“Aeris”) and/or other providers, and one or more participating carriers (the “Participating Carriers”) cannot guarantee the privacy or security of any transmission utilizing the Notification Services and that the Notification Services are capable of being intercepted by third parties without the knowledge or permission of RACO, Aeris, other providers or any Participating Carrier. Accordingly, RACO, Aeris, any other providers and the Participating Carriers shall not be liable to Subscriber or any third party for interception or use of any Notification Services.

4.4 Internet Access. Subscriber acknowledges that use of the Notification Services requires uninterrupted access to the Internet, access over which RACO has no control, and that it is Subscriber’s sole responsibility to obtain and maintain such access to the Internet at all times. Accordingly, RACO shall not be liable to Subscriber or any third party for any interruption of the Notification Services related in whole or in part to Internet access problems or any other disruption with Subscriber’s use of the Internet.

4.5 Fraudulent Use and Abuse. Subscriber shall not assist or participate in any fraudulent use or abuse of an Aeris Service. Subscriber agrees to make good faith efforts to minimize abuse or fraudulent use, to promptly report to RACO any such abuse or fraudulent use of which Subscriber becomes aware, and to fully cooperate in any investigation or prosecution initiated by RACO, Aeris, other providers or a Participating Carrier. Subscriber acknowledges that Notification Services to a RACO Device may be restricted or cancelled if there is in RACO’s or Aeris’s sole discretion a reasonable suspicion of abuse or fraudulent use. RACO shall use commercially reasonable efforts to provide prompt notice of the restriction or termination to Subscriber. Subscriber further acknowledges that a Participating Carrier may temporarily block automatic roaming in a particular geographic area experiencing fraudulent usage. Subscriber shall have sole liability for charges, costs or damages resulting from any abuse or fraud facilitated by Subscriber, Subscriber’s employees, or Subscriber’s agents. Abuse and fraudulent use of the Notification Services includes, but is not limited to: (i) attempting or assisting another to access, alter, or interfere with the communications of and/or information about another wireless customer; (ii) tampering with or making an unauthorized connection to the Aeris network or the network of a Participating Carrier; (iii) using the Notification Services in such a manner so as to interfere unreasonably with the use of the Notification Services by one or more other RACO customers or any Aeris customers or to interfere unreasonably with Aeris’s ability to provide the its services to its customers; (iv) using the Notification Services, in whole or in part, to convey obscene, salacious, or unlawful information; and (v) any unauthorized use of the Notification Services through the modification of an authentication method associated with a RACO Device.

5. Term and Termination.

5.1 Term. This Agreement shall have the term set forth on *Exhibit A*. The Service Fee may be increased by RACO to reflect increases in the costs for telecommunication services that RACO purchases, provided that RACO notify Subscriber, in writing, of the increase at least 60 days prior to the start of the month in which the increased Service Fee would apply.

5.2 Termination. A party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure the breach within 30 days after receiving written notice thereof. RACO may also terminate this Agreement, without liability to Subscriber, upon notice in the event of any of the following: (a) applicable cellular coverage or other applicable telecommunications services become unavailable; (b) lack or unavailability of other equipment or services needed by RACO to provide Notification Services; or (c) Subscriber fails to pay any portion of the Fees when due within 30 days after receiving written notice from RACO that payment is past due. RACO shall have no liability to Subscriber for terminating this Agreement in accordance with above.

5.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason, any amounts owed to RACO under this Agreement before such termination or expiration will be immediately due and payable, and all of RACO’s obligations to provide Notification Services shall immediately cease. To the extent RACO terminates the Agreement pursuant to Sections 5(a) or 5(b), RACO shall refund to Subscriber the pro-rata amount of the Monthly Fee for that period after the termination date.

5.4 Survival. Sections 5.3 (“Effects of Termination”), 5.4 (“Survival”), 6 (“Warranty and Disclaimer”), 7 (“Liability Limitation”), 8 (“Indemnification”) and 9 (“General”) will survive termination or expiration of this Agreement for any reason.

6. Warranty and Disclaimer.

6.1 Service Warranty. RACO’s sole and exclusive warranty regarding the Notification Services is that such services provided directly by RACO shall perform in conformity with standard industry practices. RACO’s sole obligation under this warranty is to promptly correct the Notification Services so that they reasonably conform to standard industry practices. If RACO is unable to so correct the Notification Services, then Subscriber or RACO may terminate this Agreement, immediately upon written notice to the other, and RACO’s sole liability shall be to refund Subscriber the pro-rata amount of the Monthly Fee paid for that period after the termination date.

6.2 RACO Device Warranty. RACO’s sole and exclusive warranty regarding the RACO Devices is that such Devices shall be free of defects in materials and workmanship at the time of delivery to Subscriber and for three (3) years immediately thereafter. RACO’s sole obligation under this warranty is to provide the parts and labor to repair or replace the RACO Device if such RACO Device does not function properly due to any such defects; provided, however, that said malfunctioning was not caused by: (a) lightning or other natural forces; (b) damage to the RACO Device caused during or otherwise resulting from the installation process; or (c) the acts or omissions of Subscriber.

6.3 Disclaimer. RACO makes no representation that Notification Services or RACO Devices shall eliminate loss to Subscriber’s equipment or other property. THE EXPRESS WARRANTIES IN THIS SECTION 6 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE NOTIFICATION SERVICES OR RACO DEVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. RACO DOES NOT WARRANT THAT SUBSCRIBER’S USE OF THE NOTIFICATION SERVICES OR

RACO DEVICES SHALL BE ERROR-FREE OR UNINTERRUPTED. SUBSCRIBER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES CONCERNING THE SUITABILITY, DURABILITY, CONDITION OR QUALITY OF THE NOTIFICATION SERVICES OR ANY DEVICES DEPLOYED THEREIN OTHER THAN THE EXPRESS WARRANTIES IN THIS SECTION 6.

7. Liability Limitation.

7.1 RACO'S LIABILITY. IN NO EVENT WILL RACO BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGED PROPERTY, LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT AND USE OF THE NOTIFICATION SERVICES. RACO'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND NOTIFICATION SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO RACO BY SUBSCRIBER UNDER THIS AGREEMENT DURING THE PRECEDING ONE YEAR PERIOD. SUBSCRIBER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RACO WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

7.2 Third Party Liability Exclusion. Subscriber acknowledges that the Notification Services are based on a telecommunications service furnished to RACO currently by Aeris and/or other providers and utilizes cellular telephone service that is furnished to Aeris and/or other providers by one or more participating carriers ("Participating Carriers") pursuant to agreements between such parties and is subject to the terms, conditions and limitations therein set forth. SUBSCRIBER FURTHER ACKNOWLEDGES THAT AERIS, OTHER PROVIDERS, THE PARTICIPATING CARRIERS AND RACO DISCLAIM ALL LIABILITY OF ANY NATURE TO SUBSCRIBER, WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF SUBSCRIBER'S USE OF AN AERIS SERVICE, AND SUBSCRIBER AGREES THAT IT SHALL HAVE NO CLAIMS, OF ANY KIND, AGAINST AERIS, OTHER PROVIDERS, THE PARTICIPATING CARRIERS OR RACO WITH RESPECT THERETO.

8. Indemnification.

8.1 General Indemnification. Subscriber agrees to defend, indemnify and hold harmless RACO, Aeris, and the Participating Carriers, and their owners, directors, officers, and employees, from and against any damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees) to the extent arising out of or resulting from: (i) the Notification Services; (ii) Subscriber's negligence or willful misconduct; (iii) the termination of Notification Services by RACO due to Subscriber's failure to meet any payment obligations under this Agreement; or (iv) any suit or proceeding against RACO, Aeris or any Participating Carrier for the infringement of any patent, copyright or intellectual property right by any services, systems, products or parts deployed by or on behalf of the Subscriber in combination and/or connection with the Aeris Service or the Notification Services, where the Aeris Service and/or the Notification Services would not be infringing without such combination and/or connection.

8.2 Indemnification for Fraud. Subscriber agrees to defend, indemnify and hold RACO harmless from and against any damages, liabilities, claims, costs and expenses (including any reasonable attorneys' fees) to the extent arising out of or resulting from: (a) Subscriber's fraudulent use or abuse of an Aeris Service; or (b) assistance by Subscriber to any third party in fraudulently using or abusing an Aeris Service.

8.3 Indemnification Mechanics. If Subscriber shall, within thirty (30) days after notice, fail to accept defense of any indemnification obligation under this Section 8, the party seeking indemnification shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle any claims on behalf of, for the account of, and at the risk of Subscriber. If the claims cannot by their nature be defended solely by one party, the other party shall make available all information and assistance that may reasonably be requested, regardless of any obligation to indemnify hereunder.

9. General.

9.1 Assignment. Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

9.2 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

9.3 Governing Law. The laws of the State of California will govern this Agreement, without reference to its conflicts of law principles.

9.4 Dispute Resolution. Any action or proceeding arising from or relating to this Agreement shall be finally settled by arbitration before American Arbitration Association (the "AAA") pursuant to its Commercial Arbitration Rules (the "Rules"). The arbitration shall be before one (1) arbitrator appointed by the AAA pursuant to the Rules. The parties agree that arbitration must be initiated within one (1) year after the claimed breach occurred and that the failure to initiate arbitration within the one-year period constitutes an absolute bar to the institution of any new proceedings. The aggrieved party may initiate arbitration by sending written notice of an intention to arbitrate by registered or certified mail, return receipt requested, to all parties and to AAA. The notice must contain a description of the dispute, the amount involved, and the remedy sought. If and when a demand for arbitration is made by either party, the parties agree to execute a submission agreement, in a form provided by AAA, setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing. Any arbitration instituted under this subsection shall take place in Contra Costa County, California.

9.5 Remedies. The parties' rights and remedies under this Agreement are cumulative.

9.6 Waivers. All waivers must be in writing and signed by the party to be charged. Any waiver or failure to enforce any provision

of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

9.7 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

9.8 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of

God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.

9.9 Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by the authorized representatives of both parties. The terms on any purchase order or similar document submitted by Subscriber to RACO will have no effect. This Agreement may be executed in one or more counterpart copies, each of which shall be deemed to be an original and all of which taken together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

RACO, Inc.

Subscriber:

By: _____
Printed: _____
Title: _____
Date: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Printed: _____
Title: _____
Date: _____
Phone: _____
Fax: _____
Email: _____

Account Rep: _____

EXHIBIT A

Effective Date: _____

Subscriber Name: _____

Subscriber Address: _____

Service Level for Notification Services: Standard/Enhanced/Enhanced AD/Premium

RACO Devices to be purchased: _____

FEES –

Purchase Price for RACO Devices: _____

The Purchase Price is due upon delivery to Subscriber of the RACO Devices

Service Fee for Notification Services: _____

The Service Fee for Notification Services is due within five (5) days of the Effective Date, and thereafter on the start of each Renewal Term.

TERM

This Agreement shall have a [one (1)/two (2)/three (3)] year term that commences on the Effective Date that shall automatically renew for one (1) year annual renewal terms unless one party provides written notice to the other party of its intention not to renew at least 30 days prior to the end of the then current term. [or This Agreement shall have a one month term that shall automatically renew on a month-to-month basis until one party provides written notice to the other party of its intention not to renew at least 30 days prior to the end of the month on which it intends the Agreement to terminate.] Notwithstanding the foregoing, the term of this Agreement may be earlier terminated pursuant to the provisions of Section 5.2 of the Agreement.

RACO's Initials _____

Subscriber's Initials _____